(18,987.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 69.

THE CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

PATRICK McGUIRE, M. M. HATHAWAY, AND PHILLIP DELLINGER, SHERIFF OF PULASKI COUNTY, INDIANA.

IN ERROR TO THE APPELLATE COURT OF THE STATE OF INDIANA.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from White circuit court	2	1
Transcript from Pulaski circuit court	3	1
Caption	3	1
Order as to hearing application for injunction	3	1
Order refusing application for injunction	4	2
Order filing amended complaint	4	2
Order filing separate answer of Hathaway	5	2
Separate answer of Hathaway	5	3
Separate answer of McGuire	6	3
Affidavit for change of venue	6	3

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	Original.	Print
Change of venue granted	7	4
Appointment of special judge	7	4
Oath of special judge	8	5
Order filing separate answer of Dellinger	8	5
Separate answer of Dellinger	9	5
Order setting cause for trial	9	6
Order withdrawing answers, &c.	10	6
Motion to make complaint more specific	10	6
Ruling on motion	11	7
Amended complaint	11	7
Exhibit A—Plat	21*a*	12
Motion to make amended complaint more specific	22	13
Ruling on motion	22	13
Order beginning hearing	22	13
Order filing bill of exceptions No. 1	23	14
Bill of exceptions No. 1	23	14
Motion to make more specific	24	14
Judge's certificate to bill of exceptions	25	15
Submission of cause	25	15
Order filing findings of fact and conclusions of law	25	15
Finding of facts	26	15
Conclusion of law	37	23
Exhibit to findings—Plat	38*b*	23
Judgment	39	24
Order granting leave to file motion for new trial	39	24
Defendants' motion for new trial	39	24
Bond on motion for new trial	40	24
New trial granted, &c	41	25
Order setting cause for hearing, &c	41	25
Order filing affidavit for change of venue	42	26
Affidavit for change of venue	42	26
Answers withdrawn, &c	43	27
Demurrer of Hathaway	43	27
Affidavit of Medary M. Hathaway	43	27
Order for change of venue to White circuit court	45	28
Certificate of clerk of Pulaski circuit court	45	28
Appointment of special judge	46	29
Demurrer withdrawn and answer filed	47	29
Answer	47	30
Order to publish depositions	49	31
Second trial begun	49	31
Order directing verdict	50	32
Verdict	51	32
Plaintiff's motion for new trial	51	33
Order overruling motion for new trial	53	34
Judgment	53	34
Order allowing appeal, &c	53	34
Order filing appeal bond	53	34
Appeal bond	54	35
Order filing transcript of evidence	55	35

	Original.	Print
Order filing bill of exceptions	55	35
General bill of exceptions	56	36
Index to evidence	60	37
Plat offered	62	38
Exhibit A—Plat	62½	39
Decree of foreclosure offered	63	40
Exhibit B—Decree of foreclosure in case of Charles E. Bill *vs.* Louisville, New Albany and Chicago Railway Company *et al*	63	40
Deed (Record No. 30) offered	71	44
Deed from John D. Howland, special commissioner, to George F. Talman *et al.*, December 27, 1872	71	44
Article of association offered	76	47
Exhibit C—Articles of association of the Louisville, New Albany and Chicago Railway Company	76	47
Articles of consolidation offered	82	50
Exhibit D—Articles of consolidation of the Louisville, New Albany and Chicago Railway Company and the Chicago and Indianapolis Air Line Railway Company	82	51
Mortgage (Record No. 25) offered	93	56
Deed of trust from the Louisville, New Albany and Chicago Railway Company to the Farmers' Loan and Trust Company and John H. Barker, January 1, 1886	93	57
Mortgage offered	118	71
Exhibit E—Deed of trust from the Louisville, New Albany and Chicago Railway Company to the Central Trust Company of New York and John H. Stotsenburg, May 1, 1890	118	71
Mortgage offered	156	94
Deed of trust from the Louisville, New Albany and Chicago Railway Company to the Central Trust Company of New York and James Murdock, September 1, 1894	157	94
Decree of foreclosure offered	192	115
Exhibit F—Decree of foreclosure in the case of The Farmers' Loan and Trust Company and John H. Baker *vs.* The Louisville, New Albany and Chicago Railway Company *et al*	192	116
Special master's report offered	223	134
Exhibit G—Special master's final report in case of The Farmers' Loan and Trust Company and John H. Barker *vs.* The Louisville, New Albany and Chicago Railway Company *et al*	223	134
Schedule A—Statement showing the method of ascertainment of dividend value of outstanding bonds	226	136
Supplemental report	227	137
Order confirming reports	228	138
Clerk's and judge's certificate	229	138
Special master's deed offered	230	139

	Original	Print
Exhibit H—Deed from Wm. A. Van Buren, special master, to Frederic P. Olcott *et al.*, committee of bondholders, March 19, 1897	230	139
Deed of Olcott *et al.* offered	238	144
Exhibit I—Deed from Frederic P. Olcott *et al.* to The Chicago, Indianapolis and Louisville Railway Company, March 31, 1897	239	144
Articles of association offered	248	149
Exhibit J—Articles of association of The Chicago, Indianapolis and Louisville Railway Company	248	149
Deed of James C. Brooks offered	257	155
Exhibit K—Deed from James C. Brooks *et ux.* to The Louisville, New Albany and Chicago Railway Company, February 20, 1896	257	155
Deposition of Hayworth offered	261	157
Deposition of James N. Hayworth	262	157
Exhibit A—Schedule for 1897	275	166
B—Schedule for 1896	276	166
C—Schedule for 1895	277	167
D—Schedule for 1894	278	167
E—Schedule for 1893	279	167
F—Schedule for 1892	280	168
G—Schedule for 1891	281	168
H—Schedule for 1890	282	168
I—Schedule for 1889	283	169
Testimony of Samuel Petrie	286	169
Exhibit L—Photograph	295*a*	176
M—Photograph	297*a*	177
Testimony of Robert Field	300	179
Plat offered	303	180
Plaintiff rests	303	181
Admission as to offers	304	181
Offers by defendants	304	181
Exhibit N—Amended complaint in McGuire *vs.* L., N. A. & C. Ry. Co	304	181
Admission as to answer in McGuire *vs.* L., N. A. & C. Ry. Co	313	186
Order of submission in McGuire *vs.* L., N. A. & C. Ry. Co	314	187
Special findings in McGuire *vs.* L., N. A. & C. Ry. Co	315	187
Judgment in McGuire *vs.* L., N. A. & C. Ry. Co.	326	194
Execution offered	328	195
Exhibit O—Execution to sheriff of Pulaski county in McGuire *vs.* L., N. A. & C. Ry. Co	328	195
Sheriff's return	329	196
Notice of sheriff's sale	336	200
Appraisement	340	202
Sheriff's deed offered	343	204
Exhibit P—Deed from Philip Dellinger, sheriff, to Medary M. Hathaway, November 22, 1898	344	205

	Original.	Print
Transcript of judgment offered	351	209
Exhibit Q—Transcript of judgment in case of McGuire *vs.* Louisville, New Albany and Chicago Railway Company	351	209
Execution docket offered	368	217
Execution docket in McGuire *vs.* L., N. A. & C. Ry. Co.	368	217
Testimony of Medary Hathaway	381	225
Exhibit T—Map of depot grounds	404*a*	240
Testimony of Edmund H. Applegate	404	241
Defendants rest	405	241
Plaintiff offers in rebuttal	405	241
Lease to Prewett offered	405	241
Exhibit R—Deed of lease from the Louisville, New Albany & Chicago Railway Company to J. H. Prewett, April 18, 1893	405	242
Lease to Myers offered	409	243
Exhibit S—Deed of lease from the Chicago, Indianapolis and Louisville Railway Company to Jacob Myers, July 1, 1897	409	244
Plaintiff rests	412	246
Defendants rest	412	246
Certificate of reporter	413	246
Clerk's certificate as to filing evidence	414	246
Judge's certificate to evidence	415	247
Judge's certificate to bill of exceptions	416	247
Clerk's certificate to transcript	417	247
Assignment of errors	419	248
Order submitting cause	420	249
Order filing brief of appellant	420	249
Order filing motion to dismiss	420	249
Order filing answer to motion to dismiss	420	249
Order filing application to amend assignment of errors	420	249
Order filing reply brief of appellees on motion to dismiss	420	249
Order overruling motion to dismiss	421	249
Order filing brief of appellees	421	249
Order filing reply brief of appellant	421	249
Order filing petition for oral argument	421	250
Order transferring cause to appellate court	421	250
Order setting cause for oral argument	421	250
Opinion of Henley, J	423	250
Judgment	424	252
Order filing petition and brief for rehearing	424	253
Order filing brief of appellees on petition	424	253
Order filing motion to strike petition from files	424	253
Order overruling petition for rehearing	424	253
Order filing petition for writ of error	425	253
Petition for writ of error	426	253
Allowance of writ of error	433	258
Order filing writ of error	435	258
Writ of error	436	258
Order filing bond on writ of error	437	259

	Original.	Print
Bond on writ of error	438	259
Order filing citation	440	260
Citation and service	441	261
Order filing assignment of errors	443	262
Assignment of errors	444	262
Clerk's certificate	448	264
Stipulation for addition to record	449	264
Order filing petition to transfer to Supreme Court for decision	450	265
Order filing answer to petition to transfer to Supreme Court for decision	450	265
Order denying petition to transfer to Supreme Court for decision	450	265
Clerk's certificate	451	265

1 THE STATE OF INDIANA:

In the Supreme Court.

Be it remembered, that heretofore, to-wit: on the 12th day of August, 1899, the same being the 72nd judicial day of the May term 1899 of said court, The Chicago, Indianapolis and Louisville Railway Company, by E. C. Field, G. W. Kretzinger, W. S. Kinnan, and Sellers and Uhl, its counsel, filed in the office of the clerk of the supreme court of Indiana a transcript of the record and proceedings of the White circuit court of said State, in a cause wherein The Chicago, Indianapolis and Louisville Railway Company was defendant, together with an assignment of errors endorsed thereon; which transcript and assignment of errors is in the words and figures following, to-wit; said transcript being filed as an appeal in term:

2 A transcript of the proceedings had in the White circuit court of Indiana in the case of The Chicago, Indianapolis and Louisville Railway Company *vs.* Patrick McGuire, M. M. Hathaway, and Phillip Dellinger, sheriff of Pulaski county, Indiana.

3 Be it remembered, that on November 23rd, 1898, the clerk of the Pulaski circuit court of Indiana, filed in the office of the clerk of the White circuit court of Indiana, a certified transcript of the proceedings had in said Pulaski circuit court, together with the papers filed in the case of, The Chicago, Indianapolis and Louisville Railway Company, *vs.* Patrick McGuire, M. M. Hathaway, and Phillip Dellinger, sheriff of Pulaski county, Indiana, which transcript and papers read as follows, towit:

"Be it remembered, that at a term of the circuit court of Pulaski county, Indiana, begun and held at the court house in the city of Winamac, in said county, commencing on the second Monday being the 8th day of November 1897, said term being held in pursuance of law, present the Hon. George W. Beeman, sole judge of said court, John C. Jones clerk thereof, and Phillip Dellinger sheriff of said county, and on the 1st judicial day thereof, being Nov. 8th, 1897, present the judge and officers aforesaid, the following proceedings were had by said court in the cause of—

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE and PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana.

Comes now the plaintiff, by E. C. Fields, its attorney, and each of the defendants appear- by Steis & Hathaway, and M. Winfield, their

attorneys, and by agreement of the parties hereto, the hearing of this cause on the application for a temporary restraining order, is set for hearing at Knox, Starke county, Indiana, on Friday, November 12th, 1897, at 1.30 p. m. and all entries, orders and decrees made therein shall have the same force and effect, as if entered in term time, in the circuit court of Pulaski county.

4

And afterwards, to wit:—on the 23rd day of November, the same being the 14th judicial day of the November term, 1897, of the Pulaski circuit court, when the following proceedings were had and entered of record in Order Book 23 page 36 & 37, and is in the words and figures following, towit:—

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE and PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana.

This order was made at Knox, Ind., Nov. 12th, 1897.

Come now the parties by counsel, and the cause is now submitted to the court for hearing on the petition for a temporary restraining order and the court being advised, finds that the plaintiff is not entitled to the injunction prayed for and the same is hereby refused.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE ET AL.

Comes now the plaintiff, by counsel, and files its amended complaint, making M. M. Hathaway a party defendant, said complaint being in the words and figures following, (this amended complaint shows that it was again filed on January 26th 1898, as an "amended complaint in two paragraphs," and the same will be set out in the transcript under that date.)

5

And afterwards, towit:—on the 1st day of December, the same being the 21st judicial day of the November term, 1897, of the Pulaski circuit court, when the following proceedings were had and entered of record in Order Book 23, page 64 and in the words and figures following, towit:—

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE and PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana, and M. M. Hathaway.

Come now the parties, and M. M. Hathaway appears and files separate answer to amended complaint in the words and figures following:—

STATE OF INDIANA, } ss:
County of Pulaski, }

In the Pulaski Circuit Court, Nov. Term, 1897.

THE CHICAGO, INDIANAPOLIS AND LOUISVILLE Railway Company
vs.
PATRICK MCGUIRE and MEDARY M. HATHAWAY.
} Separate Answer of Hathaway.

Medary M. Hathaway, a defendant in above entitled cause, for separate answer to complaint of plaintiff as amended, denies each and every material allegation therein made and contained.

M. WINFIELD &
STEIS & HATHAWAY,
Att's for Def't Hathaway.

And the defendant McGuire files separate answer to the amended complaint, in the words and figures following:—

6 STATE OF INDIANA, } ss:
Pulaski County, }

In Pulaski Circuit Court, Nov. Term, 1897.

CHICAGO, INDIANAPOLIS & LOUISVILLE R. R. Co.
vs.
PATRICK MCGUIRE, MENT M. HATHAWAY.

The defendant Patrick McGuire separately for himself herein for answer to the plaintiff's amended complaint, denies each and every material allegation therein made and contained.

WINFIELD & SPENCER,
STEIS & HATHAWAY,
Att'ys for Def.

And plaintiff now files affidavit for change of venue from the court, said affidavit being in the words and figures following:—

STATE OF INDIANA, } ss:
Pulaski County, }

In the Pulaski Circuit Court, before the Hon. George Beeman, Judge.

THE CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE and Others.

Elisha C. Field being first duly sworn on oath says that he is the general solicitor of the plaintiff in the above entitled cause and by its authority and under its direction makes this affidavit in its behalf: Affiant says that the plaintiff cannot have a fair and impartial trial of said cause before the Hon. George Beeman, judge of said court for the reason that said judge is prejudiced against the plaintiff and its cause of action herein; that said facts are true as affiant is informed and verily believes.

Wherefore a change of venue is prayed from said judge.

ELISHA C. FIELD.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 18th day of November 1897. Witness my hand and seal.

[L. S.]

WM. S. KINNAN,
Notary Public.

which change is granted by the court, and the Honorable John E. Cass, is hereby appointed special judge to try and determine said cause.

And afterwards, towit:—on the 7th day of December, the same being the 26th judicial day of the November term 1897, of the Pulaski circuit court when the following proceedings were had and entered of record in Order Book 23, page 73 & '4 and is in the words and figures, towit:

Comes now Honorable John E. Cass, and presents his appointment as special judge to try cause No. 4991, and subscribes to the legal oath, said appointment and oath being in the words and figures following, towit:—

In the Pulaski Circuit Court, Pulaski County, Indiana, November Term, 1897.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
against
PATRICK MCGUIRE and PHILLIP DELLINGER, Sheriff.

I, George W. Beeman, judge of said court, having been disqualified to try said cause by reason of granting a change of venue
8 from the court on the application of the plaintiff, hereby appoints Hon. John E. Cass, a competent and disinterested attorney of said court, as special judge thereof in said cause to try and determine the same.

GEORGE W. BEEMAN,
Judge Pulaski Circuit Court.

Dec. 3rd, 1897.

THE STATE OF INDIANA, *County of Pulaski,* } *sct:*

I, John E. Cass, swear that I will support the Constitution of the United States and of the State of Indiana, and faithfully discharge my duties as judge of the Pulaski circuit court in case of Chicago, Indianapolis & Louisville Ry. Co. against Patrick McGuire, *et al.* So help me God.

JOHN E. CASS.

Subscribed and sworn to this 7th day of Dec. 1897, before me clerk of said court.

JOHN C. JONES, *Clerk.*

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE, PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana, and M. M. Hathaway.

Come now the parties, and the defendant Phillip Dellinger, files separate answer to complaint, in the words and figures following:—

9 STATE OF INDIANA, *Pulaski County,* } *ss:*

In Pulaski Circuit Court, Nov. Term, 1897.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE ET AL.

The defendant Phillip Dellinger, sheriff of Pulaski county, Indiana, for a separate answer for himself to the plaintiff's complaint

herein denies each and every material allegation therein made and contained.

WINFIELD, STEIS & HATHAWAY,
Att'ys for Def'ts.

And now by agreement of the parties this cause is continued and set down for trial, on the first Wednesday of the January term 1898, of this court, the same being the 26th day of January 1898.

JOHN E. CASS,
Special Judge.

And afterwards, to wit:—on the 26th day of January, the same being the 3rd judicial day of the January term 1898, of the Pulaski circuit court, when the following proceedings were had and entered of record in Order Book 23, page 119 and in the following words and figures, to wit:—

10 CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY Company
vs.
PATRICK MCGUIRE, PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana, and M. M. Hathaway.

Come the parties in person and by counsel, and each defendant asks and obtains leave to withdraw their answers heretofore filed, and thereupon each defendant separately and severally file a motion to make the complaint more specific, which motion is in these words:

STATE OF INDIANA, } ss:
Pulaski County, }

In Pulaski Circuit Court, Jan. Term, 1898.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE, M. M. HATHAWAY, PHILLIP DELLINGER, Sheriff.

Come now the defendants and separately and severally move the court to require the plaintiff to make its amended complaint more specific in this, towit:

First. That the plaintiff be required to allege and show in the complaint, the interest the plaintiff has in the real estate described in the complaint.

Second. That the plaintiff be required to allege what interest and title the said M. H. Allison had in the land described in the complaint, at the time the said Allison platted or pretended to plat the land described in the complaint.

M. WINFIELD,
SPENCER & STEIS & HATHAWAY.

11 Which motion is sustained as to the first cause assigned in said motion and overruled as to the second cause therein assigned, and thereupon the plaintiff files amended complaint in two paragraphs, which is in these words:—

STATE OF INDIANA, } ss:
Pulaski County, }

In Circuit Court, January Term, 1898.

CHICAGO, INDIANAPOLIS & LOUISVILLE R. R. Co.
vs.
PATRICK McGUIRE, M. M. HATHAWAY, PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana.

The plaintiff complains of the defendants and says that it is the owner in fee simple of the following described real estate situated in the county of Pulaski and State of Indiana, towit:—

A piece or tract of land beginning at the south-west corner of Yellow and Bill streets in the town or village of Francesville, Pulaski county, Indiana, thence south along the west line of said Bill street to the north line of Sherman avenue, thence west with said north line of Sherman avenue a distance of one hundred and fifty feet (150 ft.), thence north parallel with said west line of Bill street to the south line of Yellow street, thence east with the south line of Yellow street a distance of one hundred and fifty (150) feet to the place of beginning.

Said piece or parcel of land being the same described in a certain plat dedicated by one Allison in March, 1862, and acknowledged and recorded in the office of the recorder of Pulaski county,
12 Indiana, April 8th, 1862.

That the defendants set up and assert some title, claim or interest in the said described real estate which constitutes a cloud upon plaintiff's title, and the plaintiff prays a decree quieting its said title, and that the defendants be enjoined from setting up or asserting any title, claim or interest therein.

FIELD & NYE &
GEORGE W. KRETZINGER,
Att'ys for Pl'ff.

STATE OF INDIANA, } ss:
Pulaski County, }

In the Pulaski Circuit Court, November Term, 1897.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, M. M. HATHAWAY, PHILLIP DELLINGER, Sheriff Pulaski County.

The plaintiff for a 2nd & further ground of complaint says that it is the owner of an easement in & to the following described real

estate situated in the said county of Pulaski, in the State of Indiana, described as follows, to-wit:

Beginning at the south west corner of Yellow and Bill streets in the town or village of Francesville, Pulaski county, Indiana, thence south along the west line of said Bill street to the north line of Sherman avenue, thence west with said north line of Sherman avenue a distance of 150 feet, thence north parallel with said west line of Bill street to the south line of Yellow street, thence east with the south line of Yellow street a distance of 150 feet, to the place of beginning
13 said piece or parcel of land being the same platted and dedicated for depot grounds by one Allison in March, 1862, and duly acknowledged and recorded in the recorder's office of Pulaski county, April 8th 1862.

And the plaintiff avers that on and prior to the year 1862 the Louisville, New Albany & Chicago Railroad Company, a corporation organized and existing under Indiana law, owned and operated a railroad in and through the county of Pulaski, in the State of Indiana, and through the town and village of Francesville, in said county; that said railroad was located and ran through the said piece or parcel of land hereinbefore described, or through a strip of land adjacent and adjoining the said hereinbefore described piece of land; that in March 1862, one M. H. Allison duly made, acknowledged and recorded in the recorder's office of Pulaski county, a plat sub-dividing certain lots, including the land hereinbefore described, into blocks, lots and depot grounds, and the same was recorded in the recorder's office of said county, April 8th, 1862, a copy of which plat is attached hereto and made a part hereof marked "Exhibit A;" that at the time of the making, acknowledging and recording of said plat there was no other railroad running into or through said town or village of Francesville than the railroad hereinbefore referred to, and no railroad has at any time since plat was made and recorded run into or through said town or village of Francesville, or near thereto, and the said plat was made and recorded for the purpose of dedicating the said strip of ground, designated thereon as "depot grounds" for the purpose of vesting the title and possession thereof in the said Louisville, New Albany & Chicago Railroad Company; that said railroad company at the time of said dedication had erected its depot building on said ground designated in said plat as "depot grounds," and entered into possession of said
14 described strip of land, and has from time to time since said date made other improvements thereon for the purpose of better facilitating its business, such as stock pens, tool house, side track, etc., and said railroad company from said date continued to occupy and possess said strip of land, claiming the title thereto, and its possession was continuous, uninterrupted, adverse and undisturbed until the year 1872, when the railroad property and franchises, including said strip of ground, was foreclosed in a court of competent jurisdiction and sold under a decree to the Louisville, New Albany & Chicago Railway Company, a corporation organized under Indiana

law, and took title thereto under such foreclosure and sale; and under said proceedings said railway company became the owner thereof and entered into possession and continued to operate the railroads theretofore belonging to the Louisville, New Albany & Chicago Railroad Company, and to exercise its franchises, and also took possession of said strip of land, and held the peaceable, continuous, uninterrupted and adverse possession thereof, claiming the title thereto, until the year 1881; that in the year 1881 the said railroad company consolidated with another Indiana company and an Illinois company, existing respectively under the laws of the States of Indiana and Illinois, and the company created by such consolidation took the name of the Louisville, New Albany & Chicago Railway Company; and thereupon the consolidated company entered into possession of the railroads, railroad property and franchises and real estate, including the strip of ground hereinbefore described, of each of said constituent companies, and continued in the peaceable, uninterrupted and adverse possession thereof, claiming the title thereto, until the 24th day of August, 1896; that on the 1st day of January, 1886, said railway company, created by said consolidation, executed its trust deed or mortgage to secure an issue of bonds, conveying to the Farmers' Loan & Trust Company and John H. Baker, as trustees, all of said railroad properties and franchises described in said mortgage as follows, to-wit:—

"All of the railway of the party of the first part in the city of Louisville, in the State of Kentucky, and extending from New Albany, on the Ohio river, to Michigan City in the State of Indiana, and from the city of Chicago, in the State of Illinois, to the Indiana State line, under a leasehold right, and from said State line to the city of Indianapolis, in the State of Indiana, including the railway lying and being in all of said cities and terminal rights and facilities and approaches thereto the same being about four hundred and seventy-five miles in length, and running through the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, La Porte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in the State of Indiana, and Jefferson county in said State of Kentucky, and Cook county in said State of Illinois, and also all branches thereof, including all the property of every sort or nature now owned by said railway company, and all that it may in the future acquire for the purposes and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal wood, and supplies of every kind belonging or appertaining to the railway company also all the tolls, incomes, issues and profits, arising out of the said property, and all the rights to receive and recover

the same, also all estate, right, title and interest of the party of the first part in and to any and all real estate belonging to the said party of the first part, also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents, that the said railway company shall and doth convey to the said trustees, all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, or which may at any time hereafter during the continuance of this trust be acquired by the said railway company for purposes connected with or appertaining to the railroads or railways above mentioned or described; and also all choses in action, of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind or description, real, personal or mixed, and wherever the same may be situate, that may at any time before or after the date of this indenture be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways; all of which it is hereby covenanted shall inure by way of accretion to the benefit and advantage of said trustees, and by way of further and better security."

17

That afterwards, to-wit: on May 1st, 1890, said railway company created by said consolidation, also executed a deed or mortgage to the Central Trust Company, of New York, and John B. Stotsenberg, as trustees, to secure an issue of bonds, conveying to said trustees all of the railroad property and franchises of said railway company under description like in form and effect with that contained in the description hereinbefore set out under the deed of trust or mortgage to the Farmers' Loan & Trust Company of New York, and John H. Baker, trustees; that afterwards, towit, on the 1st day of September, 1894, said railway company, created by said consolidation, also executed to the Central Trust Company of New York and James Murdock, as trustees, to secure an issue of bonds thereunder conveying to said trustees all of its railroad, railroad property and franchises and real estate, including the strip of land hereinbefore described, for depot purposes, under a description like in form and effect with that heretofore set out under the trust deed to the Farmers' Loan & Trust Company, of New York, and John H. Baker, trustees; that said three trust deeds or mortgages were duly acknowledged and recorded in the said county of Pulaski, Indiana, and the other counties in Indiana through which said railroad or railroads ran; that on August 24th, 1896, one John T. Mills, Jr. filed his creditors' bill upon a judgment theretofore obtained by him against the Louis-

ville, New Albany & Chicago Railway Company in the circuit court of the United States for the district of Indiana; and William H. McDoel was on said day appointed receiver in said suit; and such receiver was ordered by said court to enter into legal possession of the railroad and all of the property and effects
18 real, personal and moxed, of the said Louisville, New Albany & Chicago Railway Company; and said receiver did under such order on said date accordingly take possession thereof, including the strip of land hereinbefore described as depot grounds, and from said date until the 1st day of July 1897, continued in the peaceable, uninterrupted and adverse possession thereof, claiming the title thereto; that in November 1896, the Central Trust Company of New York and John H. Stotsenburg, trustees, and the Farmers' Trust & Loan Company and John H. Baker, trustees, filed their several bills in said circuit court of the United States and foreclosed said trust deeds or mortgages by reason of default in payment of the interest, and by the judgment and decree of said court William H. McDoel was also appointed receiver in said foreclosure suits; that on the 23rd day of January, 1897, final decree was entered in said court foreclosing said trust deeds or mortgages, and a decree was entered for the sale of all the property hereinbefore described and covered by said trust deeds or mortgages, which included the strip of ground designated as "depot grounds," depot buildings and side tracks situated thereon; that on the 10th day of March 1897, the special master appointed by the court to make the sale under said decree of foreclosure sold all of said described property, and reported said sale to the court on said date, and which by order of said court was duly confirmed; that on the 31st day of March, 1897, the plaintiff herein, The Chicago, Indianapolis & Louisville Railway Company was incorporated under Indiana law, and duly acquired the title and possession of all of said railroad, railroad property and franchises, including the strip of ground hereinbefore described and designated as "depot grounds" under a deed of conveyance from the purchasers of the said property at said foreclosure sale; and have since owned and occupied all of
19 railroad property and its real estate of every kind and description, including the land described as "depot grounds;" that the lien created by said trust deeds or mortgages hereinbefore referred to covered the said depot grounds and constituted an absolute lien thereon, together with the other property therein described, and became a lien thereon long prior to the lien asserted by the defendant herein, and that the claim of the defendant is against the property of the Louisville, New Albany & Chicago Railway Company, and is not a claim of any kind or nature against the property of the plaintiff, and that defendant's claim originated as follows, to wit: Said defendant McGuire in September, 1896, recovered a judgment in the circuit court of White county, Indiana, against the Louisville, New Albany & Chicago Railway Company for twenty-four hundred dollars ($2400.00); and in January, 1897, said McGuire caused a

transcript to be filed in the clerk's office of the circuit court of Pulaski county, and an execution was issued to the sheriff of said county; that said sheriff levied said execution upon a part of the said strip of land marked "depot grounds" and advertised same for sale at the court house in Winamac, Pulaski county, Indiana, for November 13, 1897; that prior to the said date of sale the plaintiff herein brought its suit in the Pulaski circuit court and caused summons to be issued therein to the defendants, McGuire, and Dellinger, sheriff, and also caused a *lis pendens* notice to be duly filed and recorded in the clerk's office of said county, prior to said date of sale; that on said 13″ day of November, 1897, the sheriff of said county, defendant herein, offered the property so levied on for sale at the court house door, and the same was bid in by the defendant M. M. Hathaway, who was one of plaintiffs attorneys of record in the suit above referred to, and the sheriff of said
20 county executed to the said defendant Hathaway a certificate of purchase; that levying said execution on plaintiff's property, and the selling of same by the sheriff, constitutes a cloud upon the title of the plaintiff to the herein described real estate.

Wherefore, plaintiff prays that its easement in and to the said real estate described be quieted and set at rest in the plaintiff, and that the defendants, and each of them, and all persons claiming by, through or under them, or either of them, be permanently, enjoined from setting up any claim, title or interest under said execution and sale to said described real estate, or any part thereof, and that the sale thereof be set aside, and the certificate issued by the defendant sheriff to said defendant Hathaway be cancelled, and the plaintiff be awarded all other proper relief, including its judgment for costs in this behalf expended.

E. C. FIELD,
W. S. KINNAN, &
JOHN NYE,
Attorneys for Plaintiff.

("Exhibit A," next attached.)

21 EXHIBIT "A."

(Here follows plat marked page 21*a*.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

22 And thereupon the defendants separately and severally refile a motion to make the amended 2nd paragraph of complaint more specific, which motion is in thses words·

STATE OF INDIANA, } ss:
Pulaski County, }

In Pulaski Circuit Court, Jan. Term, 1898.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY CO.
vs.
PATRICK MCGUIRE, M. M. HATHAWAY, & PHILLIP DELLINGER, Sheriff.

Come now the defendants and jointly and severally move the court to require the plaintiff to make the second paragraph of the amended complaint more specific in this, to wit: That the plaintiff allege the interest & title that M. H. Allison had in and to the lands described in the second paragraph of the amended complaint at the time the said Allison platted or pretended to plat the land therein described.

M. WINFIELD,
SPENCER & STEIS & HATHAWAY,
Att'ys for Def.

And thereupon the court sustains said motion, to which ruling of the court the plaintiff excepts and says that it will not amend said 2nd paragraph by making the same more specific as ordered, but will abide its exceptions to the ruling of the court, and asks and obtains leave to file its special bill of exceptions No. 1, within ten (10) days from the date hereof.

Thereupon, this cause being at issue, is submitted to the court for trial, and the court appoints Miss Sarah Decker, stenographer, to report the said cause, and she is thereupon duly sworn to discharge the duties of said reporter and thereupon the plaintiff moves
23 the court for a finding of the facts specially and court's conclusions of law thereon which motion is granted and the court having heard a part of the evidence, adjourns court until tomorrow morning at 9 o'clock a. m.

And afterwards, towit:—on the 27th day of January, the same being the 4th judicial day of the January term 1898, of the Pulaski circuit court, when the following proceedings were had and entered of record in Order Book No. 23 page No. 121 and is in the words and figures following, towit:—

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, PHILLIP DELLINGER, Sheriff Pulaski County, Indiana, and M. M. Hathaway.

Come again the parties in person and by counsel, and now again comes the plaintiff and files its bill of exceptions No. 1, which is signed by the court, and reads as follows, towit:—

STATE OF INDIANA,
County of Pulaski, } ss:

In Circuit Court, January Term, 1898.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, M. M. HATHAWAY, AND PHILLIP DELLINGER, Sheriff of Pulaski County.

Be it remembered, that on this the 26th day of January, 1898, the same being the 3rd judicial day of the January term of said court the following proceedings were had, towit: namely:—

24 The defendants filed their joint and several motion to require the plaintiff to make the second paragraph of the amended complaint more specific in this, towit:—

"That the plaintiff allege the interest and title that M. H. Allison had in and to the lands described in the second paragraph of the amended complaint at the time the said Allison platted or pretended to plat the lands therein described," which motion is in these words and figures following:—

"STATE OF INDIANA,
Pulaski County, } ss:

"In Pulaski Circuit Court, January Term, 1898.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, M. M. HATHAWAY, and PHILLIP DELLINGER, Sheriff.

"Come now the defendants and jointly and severally move the court to require the plaintiff to make the second paragraph of the amended complaint more specific in this towit: That the plaintiff allege the interest and title that M. H. Allison had in and to the lands described in the second paragraph of the amended complaint at the

time the said Allison platted or pretended to plat the lands therein described.

M. WINFIELD,
SPENCER & STEIS & HATHAWAY,
Att'ys for Def.

And thereupon the court sustained said motion to make said amended second paragraph of complaint more specific.

To which ruling of the court the plaintiff at the time excepted and the plaintiff thereupon refused to amend said second paragraph of the amended complaint, by making the same more specific as so ordered, and said that it would abide its exception to the ruling of the court and ten days' time are given in which to file its bill of exceptions No. 1.

And the plaintiff now presents this its special bill of exceptions No. 1 to the court and prays that the same may be signed and approved, which is done this 27th day of January, 1898.

JOHN E. CASS,
Special Judge."

And this cause is taken under advisement by the court.

And afterwards, towit:—on the 17th day of September, the same being the 12th judicial day of the September term, 1898, of the Pulaski circuit court, when the following proceedings were had and entered of record in Order Book No. 23 at pages Nos. 383 and 395, and is in the following words and figures, towit:—

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE, M. M. HATHAWAY, PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana.

Come the parties in person and by counsel, and the court being fully advised, finds the facts specially and its conclusions of law thereon, which finding of facts and conclusions of law are in the words and figures following, towit:

STATE OF INDIANA,
County of Pulaski, } *ss:*

In the Pulaski Circuit Court, January Term, 1898.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE, M. M. HATHAWAY, & PHILLIP DELLINGER, Sheriff of Pulaski County.

Finding of Facts and Conclusions of Law.

The court having been duly required to find the facts specially in said cause, and state its conclusions of law thereon finds the facts as follows, namely:—

1. That the plaintiff, The Chicago, Indianapolis & Louisville Railway Company, is a railway corporation duly incorporated under the laws of the State of Indiana.

2. That the plaintiff and the defendants derain their respective claims and title through the Louisville, New Albany & Chicago Railway Company, a corporation organized under the laws of the State of Indiana.

Plaintiff's Title.

3. That one Allison made a plat, which was duly acknowledged by him and recorded in the recorder's office of Pulaski county, April 8″, 1862, of which a copy is attached hereto and made a part hereof, marked Exhibit A, which indicates the land in controversy in this suit; that said piece or parcel of ground was designated on said plat "depot grounds." That said Allison recited therein that the depot building was then built thereon, and in signing said plat describes himself as the "proprietor of unsold lots." That at said time the Louisville, New Albany & Chicago Railroad Company had its railroad track constructed through the piece or parcel of ground marked "depot grounds;" that no other railroad was then constructed into or through said town of Francesville, or near
27 the same, and has been constructed into or through said town since said time.

4. That at the November term 1872, of the circuit court of the United States for the district of Indiana, and on the 20″ day of November, 1872, in the suit of Chas. E. Bill against The Louisville, New Albany & Chicago Railroad Company, *et al.* said court decreed that the railroad company, defendant in said suit, was indebted under a certain trust deed of date November 14th, 1852, to the holders of the bonds issued and secured by said trust deed in the sum of four million, nine hundred and thirty-two thousand and three hundred dollars, and that the same was due and unpaid from the said railroad company, and accordingly said court entered a decree foreclosing all and singular the line of railroad running from New Albany in the county of Floyd, Indiana, to Michigan City, Indiana, through Pulaski county, and through counties therein mentioned, including the right of way, land, superstruction, and tracks, and all other real and personal property appurtenant to the said line of railroad as an entirety, and by said decree said court appointed one John D. Howland,.special master and empowered him to execute said decree by a sale and conveyance of all of said property; that accordingly of date December 27th, 1872, said Howland conveyed in accordance with the terms of said decree to the purchasers at said sale the entire line of railroad of the said Louisville, New Albany & Chicago Railroad Company "running from New Albany, in the county of Floyd, through the county of Pulaski, Indiana, and other counties in the State to Michigan City, Indiana, including the right of way and land occupied thereby, and superstructure and tracks

thereon, depot grounds and buildings thereon, and all other real and personal property appurtenant to said line of road, together with the franchises to maintain and operate the same; to have and to hold the same in fee simple unto the parties of the second part
28 and their heirs and assigns forever.

5. That December 31, 1872, the Louisville, New Albany & Chicago Railway Company was created a railway corporation, acquiring thereunder the franchises and all rights and title purchased at the sale by said Howland under the decree of foreclosure in said United States court for the district of Indiana, and said articles of association of said Louisville, New Albany & Chicago Railway Company were duly filed in the office of the secretary of state, January 7th, 1873.

6. That on May 5th, 1881, articles of consolidation were duly made and entered into between the said Louisville, New Albany & Chicago Railway Company and the Chicago & Indianapolis Air Line Railway Company, consolidating the said line of railroad extending from New Albany, Indiana, to Michigan City, Indiana, with the line of railroad owned by the Chicago & Indianapolis Air Line Railway Company, extending from the city of Indianapolis, Indiana, to the Indiana State line between Indiana and Illinois, at or near the city of Chicago, Illinois, and under said consolidation said consolidated company took the name of the Louisville, New Albany & Chicago Railway Company.

7. That on the first day of January, 1886, the said Louisville, New Albany & Chicago Railway Company executed its trust deed to the Farmers Trust & Loan Company, a corporation created and existing under the laws of the State of New York, and John H. Barker, of Michigan City, trustees, to secure bonds issued thereunder, and for said purposes conveyed to said trustees its line of railroad extending from New Albany to Michigan City, in the State of Indiana, running through the county of Pulaski, among other counties mentioned therein; also all estate, right, title and interest of said railway company in and to any and all real estate belonging
29 to said railway company; it being the true intent and meaning of these presents that the said railway company shall and doth convey to the said trustees all and all manner of franchises of every kind and description, and however derived and wherever situate; all and all manner of real estate and interest therein wherever such real estate may be situate, for the purposes connected with or appertaining to said railroads or railways; that said mortgage or deed of trust was duly recorded in the county of Pulaski, on the 15" day of January, 1886, in Book "P" of Mortgages, on page 191.

8. That on May 1st, 1890, said Louisville, New Albany & Chicago Railway Company executed an additional mortgage or trust deed to the Central Trust Company of New York, and John H. Stotsenburg, trustees, to secure bonds issued thereunder, conveying "all the present line of railway extending from New Albany to Michigan City,

Indiana, running through the county of Pulaski, among other counties in said State, including and conveying by these presents all the property of every sort and nature, real, personal and mixed, now owned by said railway company, for the purposes of and connected with or appertaining to the railway above mentioned; also all the estate, right, title and interest of said railway company in and to any and all real estate belonging to said railway company;" that said mortgage or deed of trust was duly recorded in the recorder's office of Pulaski county, and within the time required by law, the record of which is in Mortgage Record Book "U" page No. 41.

9. That on the 1st day of September, 1894, said Louisville, New Albany & Chicago Railway Company executed a further mortgage or deed of trust to the Central Trust Company of New York and James Murdock, trustees, to secure bonds issued thereunder conveying to said trustees, "all the railway system extending from
30 New Albany to Michigan City, Indiana, and through Pulaski county, Indiana, among other counties described therein, and property of the said railway company of every kind and nature however owned, held, leased or enjoyed; including and conveying by these presents all the property of every sort and nature, real, personal and mixed, now owned by said railway company, for the purposes of and connected with or appertaining to the railway, and all estate, right title and interest of the party of the first part in and to any and all real estate belonging to the said party of the first part, and all and all manner of real estate and interest therein, wherever such real estate may be situate, at the date of these presents owned or possessed by the said railway company; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property which the said railway company now owns, as fully and to the same extent as if all such property were specifically described herein and conveyed hereby."

10. That in each of the three foregoing mortgages or trust deeds there was an express provision covering after acquired property, which provision in each of said mortgages was substantially as follows:

"Also all other railroads, extensions and branch lines which the railway company may at any time hereafter create, own or acquire, whether by construction, purchase, consolidation or otherwise, including and conveying by these presents all the property of every sort and nature, real, personal and mixed, now owned by said railway company, and all that it may in the future add, construct or acquire for the purposes of and connected with or appertaining to the said railroad mentioned and described, whether now owned or hereafter to be acquired; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and
31 bind all railroads real and personal property, which the said railway company now owns or at any time may own, as fully and to the same extent as if all said property were now in existence

and owned by the said railway company and was specifically described herein and conveyed hereby."

11. That in 1896, The Farmers Loan & Trust Company and The Central Trust Company, both of New York, John H. Barker and John H. Stotsenburg, trustees in the foregoing named mortgages, brought suit in the United States circuit court for the district of Indiana, to foreclose said mortgages against said railway company, and issue being joined, a decree of foreclosure was made and entered by said court adjudging default in the payment of the interest due and payable on each of said named mortgages, and adjudging that in consequence of such default in the payment of interest that by the terms and conditions of said mortgages the principal sum also became due — payable, and adjudging that said railway properties were covered by said respective mortgages, and that the same should be sold as one railroad system, and the same could not be sold in separate parcels without injury to the rights of creditors and the parties in interest; and the decree of said court was accordingly made and entered on the 23rd day of January, 1897, directing the sale by one William A. Van Buren, special master appointed in said decree for the purpose of making said sale, of "all and all manner of real estate or interest therein, wherever such real estate may be situate, and all franchises and property of every description and kind real, personal or mixed." And it is also decreed that the purchaser or purchasers of the property should be vested with, "and shall hold possession, and enjoy the said mortgaged premises and property, and all the rights, privileges and franchises appertaining thereto
32 as fully and severally as the said Louisville, New Albany & Chicago Railway Company now holds and enjoys or has heretofore held and enjoyed the same.

12. That on the 10th day of March, 1897, said William A. Van Buren, special master appointed in said foreclosure suit made his written report to the court showing that he had given the notice as required by the order of the court, and done and performed all other things by said decree required, and showing that the highest and best bid for said property was made by Frederick P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of the bondholders of the Louisville, New Albany & Chicago Railway Company; and that the same was sold to such persons at and for the sum of three million, one thousand dollars, ($3,001,000.00); and that on said date said court ordered, adjudged and decreed that the said report of sale of the said master "be and the same is hereby confirmed;" and that the said sale "be and the same is hereby ratified, approved, confirmed and made absolute" and decreeing that such special master execute and deliver to said purchasers, or their assigns, a deed of conveyance of said property.

13. That on the 9th day of March 1897, William A. Van Buren, special master, made a deed to Frederick P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of the bondholders of the Louisville, New Albany & Chicago Railway Company, conveying to them

"all of the railway system and property of every kind and nature formerly of the Louisville, New Albany & Chicago Railway Company, including and conveying by these presents all of the property of every sort and nature, real, personal and mixed, heretofore owned by said several and respective railroad or railway companies, for the purpose of and connected with or appertaining to the railroads or railways above mentioned, together with all the lines of said railroad or railway companies, and each of them, and all estate,
33 right, title and interest of said railroad or railway companies, and each of them, in and to any and all real estate which at the time of the entry of the decree aforesaid was owned and possessed by said railway or railroad companies and each of them.

14. That on the 31st day of March, 1897, said Frederick P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of the bondholders of the Louisville, New Albany & Chicago Railway Company made a deed of conveyance to the plaintiff herein conveying, among other things, "all estate, right, title and interest of said railroad or railway companies, and each of them, in and to any and all real estate, and all and all manner of real estate or interest in real estate, wherever such real estate may be situated;" the same conveying all right, title and interest acquired by said purchasing committee under said decree of foreclosure and sale by said William A. Van Buren, to the said purchasing committee.

15. That in April, 1862, the Louisville, New Albany & Chicago Railroad Company actually occupied said described ground with railroad and side tracks running lengthwise through the same, and had a depot building constructed thereon, and there was not then and never has been any other depot building constructed by any other person or railroad company thereon; and said railroad company continued in actual occupancy from said date of such portions thereof as were covered by said tracks, depot building and stock pens; and from April, 1862, continued in actual and uninterrupted possession thereof until the year 1873, when the Louisville, New Albany & Chicago Railway Company by deed of conveyance by said Howland, special master under said foreclosure proceedings, of said property to the Louisville, New Albany & Chicago Railway Company; that said last named company then and there took actual possession of all said parts of said described land as were covered
34 by said railroad and side tracks, depot buildings and stock pens, and continued in the peaceable and uninterrupted possession of the same until 1881, when said railway company consolidated with the Chicago & Indianapolis Air Line Railway Company, and thereupon said consolidated company by the same name continued in the peaceable, uninterrupted and actual possession of the same property theretofore held by said railway company until 1896, when the plaintiff, The Chicago, Indianapolis & Louisville & Railway Company took actual possession thereof under its deed made by said special master in the foreclosure suit aforesaid, and continued from said time to the present in the actual, continued, peaceable and uninter-

rupted possession thereof until the claim and title was asserted by defendants as hereinafter shown; that each of said above named companies under said deeds of conveyance and said act of consolidation *were* in the constructive possession of the balance of said described land designated on said plat as depot grounds, except a strip sixty feet in width on the east side of said platted depot grounds and over the length thereof which was used and occupied by a public street; and except also a like strip on the west side thereof over the length of said piece of land designated depot grounds, which was used and occupied as a public street; and except also two strips of land crossing the same east and west, being extensions of two streets marked on said plat, which have also been used and occupied as public streets.

16. That on the east side of the land marked "depot grounds" there is about a dozen buildings, some brick and some frame, built in line on designated lots facing the depot ground some of which have been built for twenty-five years; and on the west side of what *is* designated "depot grounds" there are some twelve or fifteen buildings built in line on designated lots, and facing said depot grounds, the oldest of which have been built for thirty years.

17. That in 1896, by authority of the town of Francesville the street on the east side of the depot grounds and next to the line of buildings referred to in the preceding finding, a street sixty feet in width, was improved and graveled under authority of law, and by direction of the proper officers of the town of Francesville; and one-half of the cost and expense thereof was assessed to the Louisville, New Albany & Chicago Railway Company, and the same was made a lien upon said land of said company west thereof and adjacent thereto, designated on the plat as "depot grounds;" and said railway company, and this plaintiff, has paid the full assessments for said street improvement, with the interest accumulating thereon.

18. That in 1896, by like authority of law, and under the direction of the proper officers of said town of Francesville the street running east and west across said depot grounds, being an extension of Montgomery street, as designated on said plat, was also ordered improved and graveled by said authorities of said town, and the entire cost thereof was assessed against the lands on either side thereof, marked "depot grounds," to the Louisville, New Albany & Chicago Railway Company, and the said assessment was made a lien upon said real estate for the payment of said improvement; and that said railway company, and this plaintiff, has paid the annual assessment for this improvement, together with the interest accumulating thereon.

19. That a piece or parcel of ground across the lands marked "depot grounds," being the extension of one of the streets designated on said plat as running east and west, has been used as a public street for more than twenty years.

20. That on the west side of said land marked "depot grounds"

a north and south street has been used and occupied by the public for more than twenty years as a public street.

36 21. That on said land designated "depot grounds" on the plat and on the east side of the railroad track, there *has* been constructed elevators, a hay barn, a corn crib, a warehouse, a coal house and grain offices, and a lumber shed with a lumber yard attached thereto, the first of which was constructed thereon about four years ago, and the last of which was constructed thereon one year ago; that the above named elevators, hay barn, etc., were used by private individuals to facilitate their business in connection with the receipt of lumber, the shipment of hay, grain, and coal, and possession was held by each of them under a lease from the said railway company, and under no other claim of right. There *was* also two small buildings, one used as a restaurant and the other as a grocery store, and the parties occupying the same held by a lease from said railway company, and under no other claim of right. There was also on said ground a small blacksmith shop which was constructed without authority from said railway company and without any claim of right to do so, the owner thereof having notified said railway company that he would remove the said blacksmith shop whenever said company required him to do so; that said leases by said railway company to said individuals were at nominal rentals, and for the purpose of facilitating and adding to the business of said railway company, and for the accommodation of the town of Francesville and the public.

22. That the Louisville, New Albany & Chicago Railway Company reported annually to the auditor of Pulaski county said lands designated "depot grounds" on said plat for taxation, designating the same as three lots in said returns; and that said returns for taxation were made annually from 1862 to the present time as provided by law.

23. The defendant introduced in evidence a quit claim deed from one Brooks executed in February, 1896, conveying in con-

37 sideration of one dollar the said lands designated on the plat as "depot grounds," and therein referring to the plat of said Allison and the record thereof as being the same land intended to be conveyed by said quit claim deed; that in 1862 when said Allison made and recorded said plat, the father of said Brooks, the grantor in said quit claim, held the title to said land marked on said plat as depot grounds, and in 1896 the grantor in said deed as the only surviving heir of said Brooks, deceased, conveyed whatever title he had to the Louisville, New Albany & Chicago Railway Company.

Defendant's Title.

24. That the defendant McGuire brought a suit in the White circuit court against the Louisville, New Albany & Chicago Railway Company, and in September, 1896, obtained a judgement for about

twenty-four hundred dollars; that on January, 1897, he caused a transcript of said proceedings and judgement to be filed in the clerk's office of the Pulaski circuit court, Indiana, and caused an execution to issue from said office to the sheriff of said county on said transcript of judgment, and the defendant Dellinger, sheriff of Pulaski county, levied said execution upon a part of said land designated as "depot grounds" on the plat and particularly described in his return to said execution; that said sheriff caused the same to be duly advertised, and on the day fixed for the sale thereof at the court house door sold the same to the defendant Hathaway, who at the time of his purchase was an attorney of record in said cause, and had actual notice of the issues made by the plaintiff herein, and had constructive notice thereof by a *lis pendens* notice duly filed and recorded in the clerk's office of said county prior to the date of said sale.

Conclusion of Law.

On the foregoing facts I conclude as a matter of law that
38 the plaintiff is entitled to recover and have its title quieted to the lands in question as against the defendants and all persons claiming title through them, or either of them, under the judgment, execution and sale herein.

JOHN E. CASS,
Special Judge.

(Exhibit accompanying above finding of facts and conclusion of law, is next attached.—CLERK.)

38*a* EXHIBIT.

(Here follows diagram marked page 38*b*.)

39 And the court now enters judgment upon the findings, adjudges and decrees, that the title to the -and in controversy to wit: a piece or tract of -and beginning at the south west corner of Yellow and Bill streets in the town or village of Francesville, Pulaski county, Indiana, thence south along the west line of said Bill street to the north line of Sherman avenue, thence west with said north line of Sherman avenue a distance of one hundred and fifty feet (150 ft.), thence north parallel with said west line of Bill street to the south line of Yellow street, thence east with the south line of Yellow street a distance of one hundred and fifty feet (150 ft.) to the place of beginning.

Said piece or parcel of land being the same described in a certain plat dedicated by one Allison in March, 1862, and acknowledged and recorded in the office of the recorder of Pulaski county, Indiana, April 8th, 1862, be quieted and forever put at rest as against any claim of title, right or interest in said defendants or either of them, and said defendants are each and all of them enjoined from setting up or asserting any right, title or interest in said described lands, against the title herein adjudged and decreed to said plaintiff, and it is further adjudged that the plaintiff recover of and from the defendants all its costs in this behalf expended.

And thereupon the defendants ask leave to file their joint and several motion for a new trial as of right under the statute, to which the plaintiff objects, which objection the court over-rules and the plaintiff excepts.

And thereupon the defendants file their motion for a new trial and tender their bond which is in these words, towit:

Defendant's Motion for a New Trial as of Rights.

STATE OF INDIANA, } ss:
Pulaski County, }

In Pulaski Circuit Court, September Term, 1898.

40 CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE ET AL.

Come now the defendants and jointly and severally move the court to vacate the judgment entered in the above entitled cause and ask for a new trial as of right under section 1076 Revised Statutes of 1898, Burns' addition, and tender now for the approval of the court, a bond for the payment of all costs and damages that may be recovered against them in this action.

STEIS & HATHAWAY,
J. M. WINFIELD,
Attorneys for Def'ts.

Granted Objection & Ex.

To the filing of which motion the plaintiff objects and excepts, and the defendants thereupon file their bond with W. S. Huddleston as surety in the words following, towit:—

STATE OF INDIANA, }
Pulaski County, } *ss:*

In Pulaski Circuit Court, September Term, 1898.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY }
vs. }
PATRICK MCGUIRE, M. N. HATHAWAY, and PHILLIP DELLINGER, Sheriff Pulaski County. }

We undertake that the defendants in the above entitled cause shall pay all costs and damages which shall be recovered against them therein.

M. M. HATHAWAY ET AL.
W. S. HUDDLESTON.

41 Approved by me this 17th day of September 1898.

JOHN E. CASS,
Special Judge.

which bond and surety is approved, and thereupon the court sustains the defendants' motion for a new trial, as matter of right, and vacates the judgment herein rendered, to which ruling the plaintiff objects and excepts, and it is therefore ordered that the defendants have a new trial, as of right, and that the judgment be vacated, and the special judge John E. Cass declines to further sit or try said cause.

JOHN E. CASS,
Special Judge.

And afterwards, to-wit: on the 15th day of November, the same being the 2nd judicial day of the November term 1898. of the Pulaski circuit court, *when* the following proceedings were had and entered of record in Order Book # 24 at page # 9, and is in the following words and figures, to-wit:

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY }
vs. }
PATRICK MCGUIRE ET AL. }

Come the parties, and the regular judge having heard motion for a temporary restraining order, and being disqualified, the Honorable

Moses B. Lairy is hereby appointed special judge to try and determine the cause, and said cause is set for hearing on the 2nd Tuesday of the present term of this court, being the 22nd day of November, 1898.

And afterwards, to-wit: on the 22nd day of November, the same being the 8th judicial day of the November term 1898 of the Pulaski circuit court, *when* the following proceedings were had and entered of record in Order Book # 24, page # 27, and is in the following words and figures, to-wit:

42 CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, PHILLIP DELLINGER, Sheriff of Pulaski County, and M. M. Hathaway.

Come the parties by their counsel, and plaintiff files affidavit for a change of venue from the county, said affidavit being in the words and figures following, to-wit:

STATE OF INDIANA, *County of Pulaski,* } ss:

In the Pulaski Circuit Court.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE ET AL.

Elisha C. Field, being first duly sworn on oath says that he is the general solicitor of the plaintiff in the above entitled cause, and that by its authority and under its direction — makes this affidavit in its behalf.

Affiant says that the plaintiff cannot have a fair and impartial trial in said cause in said county of Pulaski for the reason that an odium attaches to its cause of action on account of local prejudice in said county; that said facts are true as affiant is informed and verily believes.

Wherefore, a change of venue is prayed from said county.

ELISHA C. FIELD.

STATE OF ILLINOIS, *Cook County,* } ss:

Subscribed and sworn to before me this 17th" day of November A. D. 1898.

43 [L. S.]

W. S. KINNAN,
Notary Public.

Answers Withdrawn ; Def't Hathaway Files Separate Demurrer to 2nd Part of Compl.

And the defendants ask and are granted leave to withdraw their answer herein, which answer is now withdrawn by the defendants, and the court orders that the defendants leave the answer or a copy thereof on file in this cause, and the defendant M. M. Hathaway now files separate demurrer to the second paragraph of the amended complaint, said demurrer being in these words, towit:

STATE OF INDIANA, } ss:
Pulaski County, }

In Pulaski Circuit Court, November Term, 1898.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY }
vs.
PATRICK MCGUIRE, MEDARY M. HATHAWAY, ET AL. }

The defendant Medary M. Hathaway, separately for himself hereby demurs to the second paragraph of the amended complaint and for cause of demurrer, says,

First. That said second paragraph of complaint does not state facts sufficient to constitute a cause of action.

WINFIELD, SPENCER, & STIES & H., *Att'ys.*

And the defendant M. M. Hathaway now files affidavit directed to the discretion of the court in determining the county to which venue of this cause shall be changed, said affidavit being in the words and figures following, towit:—

STATE OF INDIANA, } ss:
Pulaski County, }

Pulaski Circuit Court, November Term, 1898.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY }
44 *vs.*
MEDARY M. HATHAWAY ET AL. }

Medary M. Hathaway defendant in the above entitled cause being duly sworn upon oath says: That White county adjoins Pulaski county on the south. That Monticello the county seat of White Co. is about 20 miles from Francesville, Pulaski county, Indiana. That the plaintiff's road passes through from Francesville, south to

the town of Monticello and Monticello can thus be reached by direct railroad connection. That there is no other county seat of any county adjoining Pulaski Co. that has direct rail road connection from Francesville. That all the controversy in this cause arises out of claims to real estate situate in the town of Francesville. That much of the testimony will be parol testimony. That all of the witnesses summoned in said cause reside in the town of Francesville. That there will be probably 20 witnesses subpœn-ed to testify. That said witnesses can attend at Monticello easily by the aforesaid rail road connection. That it will be a great convenience to said witnesses if the cause is sent to White county and save them a great deal of expense and time as they can reach Monticello in less than an hour. While if sent to any other adjoining county it will take about a day to reach court and will cost them a great deal more.

This affiant further makes oath, that the court in White county meets Monday Nov. 28" and a trial can be had at the said term, while if sent to any other county it will be 2 or 3 months before a trail can be had. That the clerk can make a transcript within four hours and the change can be perfected within 3 or 4 days so that the cause will come up for trial at the term commencing Nov. 28", and further affiant deposes not.

MEDARY M. HATHAWAY.

Subscribed and sworn to before me this 21st day of Nov. 1898.

45 [L. S.] VES. Q. HATHAWAY, *N. P.*

Change of Venue to White County.

And the court being advised, now sustains the motion for a change of venue of this cause.

Wherefore it is ordered that the venue of this cause be changed to the White circuit court of White county, Indiana, and four days are given in which to perfect said change.

MOSES B. LAIRY,
Special Judge.

STATE OF INDIANA, } ss:
Pulaski County, }

I, Elmer W. Smith, clerk of the Pulaski circuit court, hereby certify that the foregoing pages contain a full, true and complete transcript of the entries made in the case of Chicago, Indianapolis and Louisville Railway Company *vs.* Partick McGuire, *et al.* and that the papers forwarded therewith are all of the papers on file therein in my office.

Witness my hand and seal of the Pulaski circuit court, this 23rd day of November, 1898.

[L. S.] ELMER W. SMITH,
Clerk of the Pulaski Circuit Court.

46 And afterwards, towit:—at a term of the White circuit court of Indiana, begun and held in the court house in the town of Monticello, in said county and State, commencing on the 4th Monday being the 24th day of April, 1899, said term being held in pursuance of law, present the Honorable Truman F. Palmer, sole judge of said court, F. B. Humston, clerk thereof and John W. Warner, sheriff of said county, and on the 22nd judicial day of said term, being the 18th day of May 1899, the following proceedings were had in the said court, towit:—

Comes now the Honorable James V. Kent, and presents his appointment as special judge of this court reading as follows:

James V. Kent Appointed Special Judge.

STATE OF INDIANA, }
County of White. }

White Circuit Court, April Term, 1899.

Truman F. Palmer, judge of the White circuit court of Indiana, being disqualified to preside at the trial of certain causes pending therein: towit:—Chicago, Indianapolis and Louisville Railway Company, against Patrick McGuire; M. M. Hathaway; and Phillip Dellinger, sheriff &c. &c. by reason of the fact that the undersigned has been interested as counsel in matters out of which the said action grew.

The Honorable James V. Kent now judge of the 45th judicial circuit of the State of Indiana, is appointed to preside in said White circuit court and to act as special judge in the trial of said cause, and also to take full charge of the docket of said White circuit court while he shall be present on account of said cause so set down specially before him, with as full power and authority to try and determine all causes now pending or to be commenced in said court while he is so present, as the undersigned might have if personally present and presiding.

Witness my hand this 16th day of May 1899.

TRUMAN F. PALMER,
47 *Judge White Circuit Court.*

He now takes his seat upon the bench hereof, present the other officers as heretofore, and the following proceedings are had in the case of

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY }
vs.
PATRICK MCGUIRE ET AL. }

Demurrer to Complaint Withdrawn.

Come now the parties, the plaintiff by Sellers & Uhl, and E. C. Field and George W. Kretzinger, its attorneys; and the defendants

by C. C. Spencer; M. Winfield and Steirs & Hathaway, their attorneys, and the defendants now withdraw their demurrer to the plaintiff's complaint, and they now refile their answer to complaint reading as follows, towit:—

Answer to 1st Par. of Amended Compl.

STATE OF INDIANA, }
County of Pulaski, } ss:

In the Pulaski Circuit Court, January Term, 1898.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY }
vs.
PATRICK MCGUIRK and M. M. HATHAWAY. }

Defendants *and* for answer to the 1st paragraph of plaintiff's amended complaint say, that they deny that the plaintiff is the owner and denies that it has any interest whatever in the following described parts and portions of the lands described in the plaintiff's complaint, towit:—Commencing at the north west corner of lot No. twelve (12) in block No. nine (9) in the town of Francesville, in Pulaski county, Indiana, thence west parallel with Yellow street in said town, 50 feet to a post on the west line of Bill street at the place of beginning thence west parallel with the south line
48 of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way 190 feet to a post, thence east parallel with the south line of Yellow street 150 feet to the west line of Bill street thence north with the west line of Bill street 190 feet to the place of beginning.

Also commencing with the south west corner of lot No. seven (7) in block No. nine (9) in said town, thence west with the north line of Montgomery street to the west line of Bill street to a post at the place of beginning, thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel with the east line of said right of way sixty-six (66) feet to a post, thence east parallel with the north line of said Montgomery street to the west line of Bill street, thence south with sixty-six (66) feet to the place of beginning.

Commencing at the north-west corner of lot No. twelve (12) in block No. fourteen (14) in said town, thence west with the south line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line of right of

way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way three hundred and sixty (360) feet to the north line of James street to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of Montgomery street to the place of beginning.

Also: Commencing at the north west corner of lot No. twelve (12) in block No. twenty-two (22) in said town, thence west
49 with the south line of James street to the west line of Bill street to a post at the place of beginning; thence west with the south line of James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of the said right of way three hundred and sixty (360) feet to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street three hundred and sixty (360) feet to the south line of James street to the place of beginning.

All of the above described lands being in the town of Francesville in Pulaski county, in the State of Indiana.

And as to such and above described the defendants deny each and every allegation contained in the plaintiff's amended complaint. And as to the remaining portions of said lands described in the plaintiff's amended complaint, these defendants admit that the plaintiffs is the owners thereof and these defendants hereby expressly disclaim all interests therein or any claims thereto whatever.

M. WINFIELD AND
STEIS & HATHAWAY AND
CHAS. C. SPENCER,
Att'ys for Def'ts.

2nd Trial.

Upon plaintiff's motion the depositions on file herein are now ordered published in open court.

The issues being joined between the parties, the defendants now move the court that this cause be tried by a jury, which motion is sustained by the court, to which ruling of the court the plaintiff excepts and is given ten days in which to file its bill of exceptions.

Comes now a jury, towit: Jacob W. Daugherty; William H. Hutton; William H. Downey; Robert D. Roberts; James P. Foltz; John N. Wilson; Alfred Mathews; John P. Brown; Isaac Amick;
50 William Cowger; Joseph Mowerer and Albert Hibner, twelve good and lawful men, householders and free holders and qualified voters of this county, duly elected, tried and sworn to well and truly try the issues joined between the parties and a true verdict render according to the law and the evidence.

Comes also Lucy S. Taylor, the official reporter hereof, heretofore appointed and qualified as such; and the jury having heard a part

of the evidence, is now allowed to separate under the instructions of the court until 9 o'clock tomorrow morning, until which time the further hearing of this cause is continued.

And afterwards, towit, on the 19th day of May 1899, being the 23rd judicial day of the said April term 1899, of said White circuit court, present the said Special Judge James V. Kent, and the other officers as heretofore, the following further proceedings were had in the case of,

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, M. M. HATHAWAY, and PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana.

Court Directs Jury to Return a Verdict for Defendant-.

Come again the parties, in person and by their attorneys, and comes also the jury; and the testimony being closed, the court now directs the jury to return a verdict for the defendants herein, and accordingly the jury now returns their verdict as follows,

51 "STATE OF INDIANA, *White County,* } *ss:*

In the White Circuit Court, April Term, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, M. M. HATHAWAY, and PHILLIP DELLINGER, Sheriff of Pulaski County, Indiana.

We the jury find for the defendants.

JAMES P. FOLTZ, *Foreman.*"

And thereupon the plaintiff files its motion for a new trial which motion is in these words,

Plaintiff's Motion for a New Trial.

STATE OF INDIANA, } ss:
White County, }

In the White Circuit Court, April Term, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY }
vs. }
PATRICK MCGUIRE, M. M. HATHAWAY, PHILLIP DELLINGER, } Sheriff Pulaski County. }

The plaintiff herein moves the court for a new trial in said cause upon the following grounds, towit:—

1st. Because the court erred in directing the jury to return a verdict for the defendants.

2nd. Because the court erred in striking out the 2nd paragraph of plaintiff's amended complaint.

3rd. Because the court erred in ordering the plaintiff to make its 2nd paragraph of amended complaint more specific.

52 4th. Because the verdict of the jury is contrary to the evidence.

5th. Because the verdict of the jury is contrary to law.

6th. Because the verdict of the jury is not supported by sufficient evidence.

7th. Because the court erred in refusing to permit the plaintiff to introduce and read in evidence the town plat of the town of Francesville, made and executed by one Allison in 1862, recorded in the recorder's office of Pulaski county.

8th. Because the court erred in permitting the defendants over the objection and exception of the plaintiff, to read in evidence the return of the sheriff on the execution issued upon the judgment of the defendant McGuire against the Louisville, New Albany and Chicago Railway Company.

9th. Because the court erred in permitting the defendants to read in evidence, over plaintiff's objection and exception the deed by the Sheriff Dellinger, to the defendant Hathaway on the execution issued upon the judgment of the defendant McGuire against the Louisville, New Albany and Chicago Railway Company.

10th. Because the court erred in refusing to strike out said sheriff's deed from the evidence in said cause on plaintiff's motion.

11th. Because the court erred in permitting the witness Hathaway to testify, over the objection and exception of the plaintiff to the occupancy and use of the grounds in controversy by various persons prior to February 20th 1896.

12th. Because the court erred in permitting the witness Hathaway to testify over the objections and exceptions of the plaintiff, to

the use and occupancy of the land in controversy after February 20th 1896.

53 13th. Because the court erred in refusing the offered testimony of the witness Petre as to the amount and payment of taxes to the town of Francesville on the land in controversy for town purposes and for street improvements for the years 1891 to 1898 inclusive as the same appeared on the tax duplicate of said town of Francesville.

Whereupon the plaintiff prays a new trial.

GEO. W. KRETZINGER,
E. C. FIELD,
Att'ys for Plaintiff.

Plaintiff's Mo. New Trial Overruled, Ex., Judgment.

And the court being advised, over-rules plaintiff's said motion for a new trial, to which ruling of the court the plaintiff at the time excepts, and thereupon the defendants' attorneys moves the court for judgment upon the verdict of the jury, which motion is sustained by the court.

It is therefore adjudged and decreed by the court that the plaintiff take nothing by its cause of action, and that the defendants recover of and from the plaintiff their costs in this behalf expended.

Appeal Prayed, Granted; 60 Days for Bill of Exceptions, 30 Days for Bond.

Whereupon, the plaintiff prays an appeal to the supreme court of Indiana, which is granted by the court, and the plaintiff is given sixty days in which to make and file its bill of exceptions herein, and the plaintiff is given sixty days in which to file its appeal bond herein in the sum of five hundred dollars, with James Murdock as surety thereon which surety is approved by the court.

Bond Filed.

And afterwards, towit:—

In Vacation, June 13th, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
54 PATRICK MCGUIRE and Others.

Comes now the plaintiff, by Sellers and Uhl, its attorneys, and files its appeal bond in the sum of five hundred dollars, with James Murdock as surety thereon, which bond has been heretofore approved by the court.

"Know all men by these presents, that we, Chicago, Indianapolis and Louisville Railway Company and James Murdock, are held and firmly bound unto Patrick McGuire, Philip Dellinger and M. M. Hathaway in the penal sum of five thousand dollars, to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3rd day of June 1899.

The condition of the above obligation is such, that whereas, heretofore, towit: on the 19th day of May 1899, the said Patrick McGuire, Phillip Dellinger and M. M. Hathaway, in the White circuit court, recovered a judgment against the said Chicago, Indianapolis, and Louisville Railway Company for the sum of the costs in that behalf expended, for which said judgment of said White circuit court, the said Chicago, Indianapolis and Louisville Railway Company has taken an appeal to the supreme court of Indiana.

Now if the said Chicago, Indianapolis and Louisville Railway Company shall well and truly prosecute said appeal, and abide by and pay the judgment and costs, which may be rendered or affirmed against it, then the above obligation to be null and void; otherwise to be and remain in full force and virtue in law.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY, [SEAL.]
By E. C. FIELDS, *Gen'l Sol'r.* [SEAL.]
JAMES MURDOCK. [SEAL.]

55 *Long-hand Transcript of Evidence Filed.*

And afterwards, towit:

In Vacation, July 6th, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MCGUIRE ET AL.

Comes now Lucy S. Taylor, the official reporter of the White circuit court of Indiana, and files her long hand transcript of the evidence taken in this cause, which transcript is duly certified to by her and reads as follows, towit:—(follows in bill of exceptions.)

Plaintiff's General Bill of Exceptions Filed.

And afterwards, towit:

In Vacation, July 12th, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK McGUIRE, M. M. HATHAWAY, and PHILLIP DELLINGER, Sheriff Pulaski County, Indiana.

Comes now this 12th day of July 1899, the plaintiff, and files its general bill of exceptions, signed by Hon. James V. Kent, special judge, and embodying the long hand manuscript of the short hand reporter's notes of the evidence in above entitled cause which bill of exceptions is in the words and figures following, towit:—

56 *General Bill of Exceptions.*

STATE OF INDIANA, *County of White,* } *ss:*

In the White Circuit Court, April Term, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
vs.
PATRICK MAGUIRE, MEDARY M. HATHAWAY, PHILIP Dellinger, Sheriff of Pulaski County, Indiana. } No. 902.

Appearances.

For the plaintiff: Geo. W. Kretzinger E. C. Field Sellers & Uhl.
For the defendants: Chas. C. Spencer M. Winfield Steis & Hathaway.

57 STATE OF INDIANA, *White County,* } *ss:*

In the White Circuit Court, to the April Term, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE Railway Company
vs.
PATRICK MAGUIRE, M. M. HATHAWAY, Philip Dellinger, Sheriff of Pulaski County, Indiana, and ——. } Plaintiff's Bill of Exceptions No. —, Containing the Evidence and Rulings Relating Thereto.

Be it remembered, that on the 18 day of May, 1899 the above entitled cause came on for trial before the Honorable James V. Kent,

special judge of said court, and a jury; that on the trial of said cause and in support of the respective issues thereon, the following evidence was given to the jury trying said cause and the following rulings of the court were made in respect to the admission and rejection of evidence; and the objections and exceptions thereto were made and taken as noted therein, which evidence, objections thereto, rulings and exceptions, at the time the same were so delivered and given to the jury, and at the time said rulings of the court were made and at the time said objections were made, were taken down and reported verbatim and in full shorthand notes by Lucy S. Taylor, the official shorthand reporter of said court, duly sworn as such reporter, and the said reporter, after the conclusion of said trial and on the request of the plaintiff therein there for, made out and furnished said plaintiff with a transcript written out in longhand
58 of all the evidence given in said cause and of the objections, rulings and exceptions of which a verbatim report in shorthand had been made and taken by her as aforesaid, the said transcript being made in longhand manuscript of all the evidence given in said cause and the rulings of the court in the admission and rejection of evidence, with the objections and exceptions therein and thereto; which longhand manuscript, duly certified by said reporter to be a full, true and complete transcript of all the evidence and rulings, objections and exceptions so taken by her as aforesaid, was on the 6th day of July, 1899, filed by said reporter for plaintiff in the office of the clerk of said court as part of the record in said cause; and which said original longhand manuscript of said evidence, rulings, objections and exceptions is incorporated into this bill of exceptions and made a part thereof, and the same is in the words and figures following, to-wit:—

59 *Official Reporter's Transcript of the Evidence.*

Transcript of the evidence and proceedings in the cause of The Chicago, Indianapolis and Louisville Railway Company *vs.* Patrick Maguire, Medary M. Hathaway, Philip Dellinger, sheriff of Pulaski county, Indiana, in the White circuit court of the State of Indiana, April term, 1899, made by Lucy S. Taylor, the official reporter of said court, cause No. 902.

60 *Index.*

Plat. (Exhibit A.)..... 60
Decree of foreclosure, Bill *vs.* L. N. A. & C. Ry. Co. (Exhibit B.)..
Deed Record 30, page 297 *et seq*..... 62
Articles of association, (Exhibit C.)..... 75
Articles of consolidation, (Exhibit D.)..... 82
Mortgage record 25, page 194 *et seq*..... 93
Mortgage to Central Trust Co. May 1, 1890, (Exhibit E.)..... 119
Mortgage Record 41, page 75, *et seq*..... 159

Decree of foreclosure, in U. S. court, Farmers' Loan & Trust Co., and John H. Barker *vs.* L. N. A. & C. Ry. Co. (Exhibit F.) 198
Special master's final report of sale. (Exhibit G.) 231
Special master's deed, (Exhibit H.) 238
Deed from Alcott, Poor & Rouse to pl'ff. (Exhibit I) 246
Articles of association of the pl'ff Co., (Exhibit J) 256
Deed of Brooks to L. N. A. & C. Ry. Co. (Exhibit K.) 266
Deposition of James N. Hayworth 270
Samuel Petrie 295
" " (cross examination) .....
Photograph (Exhibit L) .....
Photograph (Exhibit M) .....
Robert Field .....
" " (cross examination) .....
Plaintiff rested its case .....
Amended complaint in case of Maguire *vs.* L. N. A. & C. Ry. Co. Filed Feb. 11, 1896 (Exhibit N.) .....
Admission as to answer, in same case .....
Order Book 41, pages 289, 290 .....
Order Book 41, pages 294 to 308, inclusive .....
Execution issued to sheriff Pulaski Co. (Exhibit O.) .....
61 Sheriff's deed, Exhibit P .....
Transcript of judgment. (Exhibit Q) .....
Execution Docket 17, pages 225, 225, 230, 230, 231 .....
Medary Hathaway .....
" " (cross examination) .....
Plat, (Exhibit T.) .....
Edmund Applegate .....
Defendants rested their case .....
Lease of L. N. A. & C. Ry. Co. to J. H. Prewett, (Exhibit R) .....
Lease of pl'ff Co. to Jacob Myers, (Exhibit S) .....
Plaintiff rested its case .....
Defendants rested their case .....
Reporter's certificate .....
Clerk's certificate .....
Judge's certificate .....

62 *Plat Offered.*

Plaintiff offered in evidence a certified copy of plat of the town of Francesville, Pulaski county, Indiana. Defendants objected to the introduction of the plat for the reasons, first: Mr. Allison signs himself as the proprietor of unsold lots; it is headed a new and replotted plat of the town of Francesville, Pulaski county, State of Indiana; he does not appear to be the owner of the grounds; he simply makes a replat of the town of Francesville; he makes what is called a new and replotted plat of the town of Francesville, as the

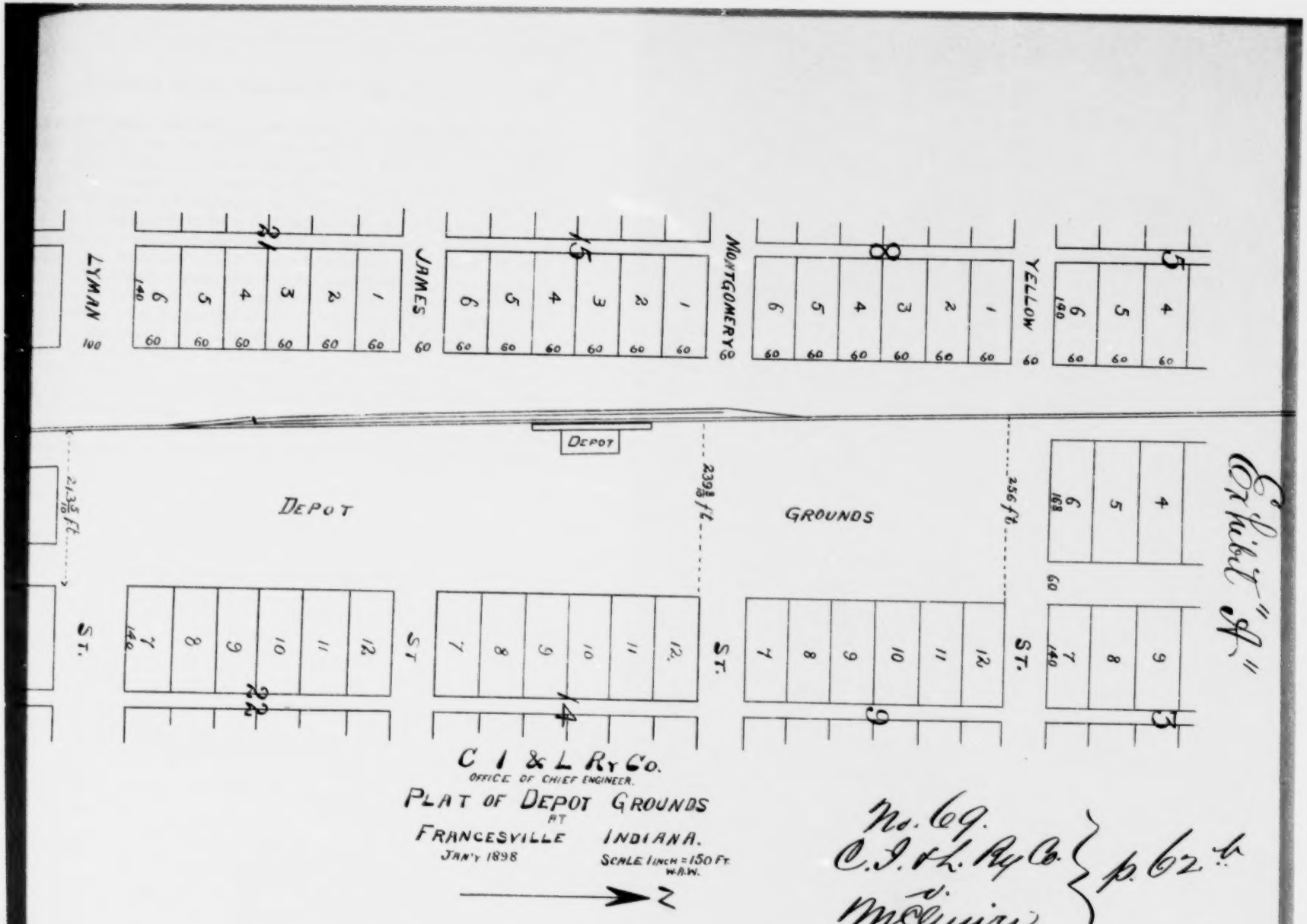

Exhibit "A"

No. 69.
C. I. & L. Ry Co. } p. 62 ½
McGuire

proprietor of unsold lots, and claims simply to be the owner of unsold lots; no one but the owner can dedicate lands either to the public or individuals, and there is no evidence here that he was the owner of the grounds; it is the duty of the railway company to back up its plat by previous evidence to show that he had a right to make what is supposed to be a dedication; second: Defendants objected to the introduction of this plat, because as a dedication of this ground in controversy, it is void, because the name of the grantee is not named; there can not be a dedication to a railroad corporation, at common law; it can only be by virtue of the statute, and the statute must be complied with. Third: It is void because there is no description of the lands; it would be impossible for a surveyor from this description to find the boundaries of this land.

The court sustained the objection, to which ruling of the court, the plaintiffs, at the time, excepted, and asked for ten days in which to file bill of exceptions.

The plat so offered (identified as Exhibit A) and refused by the court was the same as appears upon the following page of this transcript.

62*a* EXHIBIT "A."

(Here follows plat marked page 62*b*.)

63 Plaintiff offered in evidence a certified copy of the decree of foreclosure in the case of Charles E. Bill *versus* The Louisville, New Albany and Chicago Railroad Company, *et al.*, entered in 1872. (Identified by reporter as Exhibit B.)

The defendants objected to the introduction of the certified copy of the decree, on the ground, that there is nothing described in this decree except the lay-out of the road its right of way and such ground as it uses for railroad purposes. And secondly. That the owner of this ground is not made a party to this suit. There is no pretense in the decree that the persons owning this ground or ever having owned it were made parties to the suit to answer as to any rights that they may have to the land.

The court overruled the objection, to which ruling of the court, the defendants, at the time, excepted.

And the said certified copy of the decree of foreclosure being then read and given in evidence was in the words and figures following, to-wit:

EXHIBIT B.

Decree of Foreclosure.

In the Circuit Court of the United States for the District of Indiana, November Term, 1872.

NOVEMBER 21", 1872.

Before the Honorable Thomas Drummond and the Honorable Walter Q. Gresham, judges.

64

CHARLES E. BILL *vs.* THE LOUISVILLE, NEW ALBANY AND CHICAGO Railroad Company, John Savage Shaw, Laura W. Shaw, Laura H. Shaw, Frank E. Shaw, Gideon Shaw, Helen Shaw; James E. Emerson, Administrator of Charles N. Emerson, Deceased; Blanch V. Babcock and Myron Babcock, Her Husband; Gideon Putnam and Stella C. Putnam, His Wife; Henry W. Shaw, and Avery V. Williams.	Chancery.	No. 58.

Now on this 21" day of November, 1872, this cause came on for final hearing on the amended supplemental bill of complaint filed herein on the 2" day of June, 1871, and the answer of the intervening defendants, John Savage Shaw, and others filed on September 4", 1871, the replication thereto, the default of the said railroad company, the report of the special master filed March 25", 1872, and the depositions and evidence adduced and at the same time the cross-

bill of John Savage Shaw, and others filed June 1", 1872, came on for final hearing upon the cross-bill, the answer of the said complain-t, Charles E. Bill, thereto, the replication and proofs adduced and the court having heard counsel thereupon and being sufficiently advised in the premises do now finally order, adjudge and decree that the said cross-bill of said John Savage Shaw and others filed on June 1", 1872, be, and the same is hereby dismissed absolutely for want of equity, and that the complainant recover costs.

65 And it is further adjudged and decreed that upon the said amended supplemental bill the equity of the cause is with the complainant; that the material allegations therein contained are true and that by reason of such matters the said complainant Charles E. Bill is entitled to the relief prayed at the foot thereof.

And the court finds and decrees from the evidence in the case and the report of the special master that there is now outstanding and due to the different holders of the ten per cent. bonds of the said railroad company issued under the trust mortgage dated February 8", 1851, the sum of one million, one hundred and ninety-six thousand eight hundred and sixty-eight dollars ($1,196,868.00), and that the said bonds by virtue of the said mortgage constitute a first and paramount lien on the property described therein.

And the court further finds and decrees that there is now outstanding and due to the different holders of the eight per cent. bonds of the said railroad company issued under the trust deed dated February 14", 1852, the sum of four million, nine hundred and thirty two thousand three hundred dollars ($4,932,300.00), and that said bonds by virtue of the said trust mortgage constitute a first and paramount lien on the property described therein subject only to the lien and priority of the mortgage of February 8", 1851, as aforesaid.

And the court further finds that the said several sums aforesaid are justly due and unpaid from the said Louisville, New Albany and Chicago Railroad Company to such different bond creditors, that the said corporation is insolvent and that it has no assets other than the property specifically described in the said two trust mortgages, which mortgaged property is not sufficient to pay the

66 debts charged upon it by such mortgages, and that in consequence of such default the said mortgages should be foreclosed and the property sold to realize the said debts.

And the court further finds that all the said sums so secured by the said two mortgages and by the terms of said bonds and mortgages are due and payable without relief from valuation or appraisement laws.

For the purpose therefore of finally closing the trusts embraced in the said two mortgages and securing the application of the proceeds of all and singular the mortgaged property to the satisfaction and payment of the just debts of the said bond creditors as they are hereinbefore found and adjudged.

It is ordered and decreed that the said two mortgages be fore-

closed and that all and singular the line of railroad running from New Albany in the county of Floyd, through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte, to Michigan City, and being of the length of two hundred and eighty-eight miles or thereabouts; that is to say:

The said railroad as at present constructed and operated including the right of way and land occupied thereby together with the superstructure and tracks thereon, engines, tenders, cars, tools, materials, equipments, machinery, furniture, and all other real and personal property appurtenant to the said line of railroad and used for the purpose of operating the said line of railroad together with the tools, income and revenues levied therefrom and the franchises to maintain and operate the same be sold as an entirety, and without any relief from valuation or appraisement laws at public auction to the highest bidder at the court house door in the city of
67 New Albany, Indiana, where the principal office of the said company is situated upon such notice by advertisement in some newspapers of general circulation published at New Albany, and at Indianapolis, Indiana, for the length of time required by the laws of the State of Indiana, and the rules of this court in case of the sale of real estate on execution and upon such sale it is ordered that the equity of redemption of the said Louisville, New Albany and Chicago Railroad Company, and all claiming under it, and of the said intervening defendants, in and to the said property hereby directed to be sold and each and every part thereof be forever barred and foreclosed.

And it is further ordered that John D. Howland, Esq., be, and he is hereby appointed special commissioner, and invested with full power and authority to execute this decree by the sale and conveyance of the said railroad property appurtenances, franchises as herein provided; and he is directed and required upon receiving a certified copy of this decree to proceed to execute the same with all reasonable speed by giving the notice and making the sale of said property on the terms and in the manner herein specified.

On the sale of said property the terms shall be cash in hand on the day of such sale unless the property is bought in by the holders of said eight and ten per cent. bonds or the agent or attorney of such bond creditors in which case the said special commissioner shall be authorized and required to receive in *pro rata* payment of such bid and purchase money (except as to all costs and expenses of sale justly chargeable against the said proceeds of sale, all which costs and expenses must in case of any bid be paid in cash) the
68 surrender and delivery to him of the said ten per cent. and eight per cent. mortgage bonds, to be credited on such bid in the following proportion, that is to say:

Each ten per cent. bond and accompanying coupons to be entitled to its proper proportion of one hundred and thirteen, two hundred and eighty eights (113 / 288) of the amount of said purchase money

after deducting the costs and expenses of sale. Each eight per cent. bond and accompanying coupons to be entitled to its proper proportion of one hundred and seventy five, two hundred and eighty eights (175/288) of the amount of such purchase money after deducting costs and expenses of sale.

And on the payment of such bid at such sale either in cash or in bonds in compliance with the terms of this decree, it is ordered that the said special commissioner do make, execute, acknowledge and deliver to the purchaser at such sale a good and sufficient conveyance vesting in the said purchaser or purchasers in fee simple absolute all and singular the said line of railroad, appurtenances, equipment and franchises which are directed to be sold hereby, and on the delivery of the said deed of conveyance to the said purchaser or purchasers at such sale, he or they shall forthwith be let into the quiet and exclusive possession and enjoyment of all and singular the said property so purchased by them.

And the said special commissioner is directed to report to the court his doings in the premises, and to pay into court after deducting the expenses of sale all of the moneys and bonds which may have been received by him upon such sale.

And it is further ordered and directed that the complainant do have and recover of the intervening and answering defendants John Savage Shaw and others the costs of this action growing out of and after the issues tendered by the said answers, the said costs to be taxed by the clerk.

69

And the defendant intervenors herein pray an appeal to the Supreme Court, which is allowed (without supersedeas) in their entering into bond according to law with security to be approved by the court in the penal sum of two thousand dollars.

DISTRICT OF INDIANA:

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of the decree made and entered in said court on the 21" day of November, 1872, in the cause of Charles E. Bill *vs.* The Louisville, New Albany and Chicago Railroad Company, *et al.*, No. 58, as fully as the same appears of record in my office.

Witness my hand and seal of said court, this 15" day of December, 1898.

[L. S.] NOBLE C. BUTLER, *Clerk.*

70 DISTRICT OF INDIANA:

I, John H. Baker, judge of the district court of the United States, for said district, do certify that at the date of the foregoing certificate, Noble C. Butler was, and now is, the clerk of the circuit court

of the United States, for said district, and that his attestations aforesaid is in due form of law.

Witness my hand, this 15" day of December 1898.

JOHN H. BAKER, *Judge.*

71 *Deed from Howland to Talman.*

Plaintiff offered in evidence Deed Record No. 30, at page 297, (it being admitted by the parties that the records introduced in evidence are records on file in the office of the recorder of White county, Indiana), the record offered being a deed from Howland, special master, to Talman.

Defendants objected to the introduction of this deed, for the reason that the master's deed, approved therein by the court does not establish any title to this land; it is not sufficient; secondly, because there is nothing described in that deed except the lay-out of the road.

The court overruled the objection, to which ruling of the court, the defendants, at the time excepted.

And the said deed being read and given in evidence was in the words and figures following, to-wit:

This indenture, made and entered into this twenty seventh day of December, in the year of our Lord, one thousand eight hundred and seventy two, between John D. Howland special commissioner party of the first part and George F. Talman, Frederick Schuchardt, James H. Banker, Edward Minturn, Moses Taylor, Charles T. Leverich, and John Steward, parties of the second part, witnesseth, that whereas on the twenty-first day of November, 1872, by the consideration of the circuit court of the United States, within and for the district of Indiana, a decree of foreclosure was duly rendered and enrolled in the records of said court in a certain action therein pending on the equity side thereof wherein Charles E. Bill as alternate trustee was complainant, and The Louisville, New Albany and Chicago Railroad Company, and others were defendants, by which decree its was adjudged that the said railroad company had by her original corporate name of the New Albany and Salem Railroad Company, duly executed and delivered

72 the two trust mortgages of February 8, 1851, and February 14, 1852, conveying and assuring to the said Bill as such alternate trustee all and singular the property, appurtenances, incomes, tolls, right and franchises enumerated in the said two trust conveyances, and that under the said trust mortgage, dated February 8, 1851, there was due for principal and interest of the bonds issued thereunder, and outstanding at the date of said decree, of the sum of one million, one hundred and ninety six thousand, eight hundred and sixty eight, ($1,196,868.00) dollars, collectible without relief from valuation or appraisement laws; that under the

said trust mortgage, dated February 14, 1852, there was due for *due for* principal and interest of the bonds issued thereunder and outstanding at the date of said decree, the sum of four million nine hundred and thirty two thousand three hundred dollars, ($4,932,300.00) collectable without relief from valuation or appraisement laws. And the said decree further ordered that in as much as the conditions of said two trust conveyances had been broken, for the purpose of effectuating the trusts contained in the said instruments, and realizing the several sums due as aforesaid under the said mortgages, the entire property embraced therein viz: all and singular the line of railroad running from New Albany in the county of Floyd, through the counties of Clark, Washington, Orange Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte to Michigan City, and being of the length of two hundred and eighty-eight miles, or thereabouts, that is to say the said railroad as now constructed and operated including the right of way and land occupied thereby, together with the superstructure and tracks thereon, engines, tenders, cars, tools, materials, equipments, machinery, furniture, and all other real and personal property, appurtenant to the said line of railroad and used for
73 the purpose of operating the said line of railroad together with the tolls, income, and revenues to be levied therefrom and the franchises to maintain and operate the same should be sold as an entirety and without relief from valuation or appraisement laws, and that upon such sale the equity of redemption of said railroad company and all the other defendants to said action should be barred and foreclosed. And the said decree further ordered that such sale should be by public auction at the court house door in the city of New Albany, Indiana, upon such notice by advertisement — newspapers, published at New Albany and Indianapolis for the length of time required by the laws of the State of Indiana, and the rules of said court, in case of the sale of ordinary real estate on execution, and that said John D. Howland should be appointed special commissioner to execute such decree by making said sale and executing, acknowledging and delivering a conveyance to the purchaser, and the manner specifically pointed out in the said decree. And whereas, the said special commissioner as directed — the said decree, proceeded on the receipt of a certified copy thereof to advertise the sale of said property by advertisements for more than three weeks published in the Albany Ledger-Standard a newspaper of general circulation published at New Albany, Indiana, and in the Indianapolis Journal, a newspaper of general circulation, published at Indianapolis, Indiana, in the manner required by law, and in all respects in conformity with said decree and said party of the first part, in obedience to the command of said decree and the terms, advertisements, proceeded at the hour of one o'clock p. m. on the twenty-seventh day of December A. D. 1872 at the court house door in the city of New Albany, Indiana, to sell at public auction to the highest

bidder, all and singular the said line of railroad,
74 appurtenances and franchises so directed to be sold as aforesaid, and having offered first for sale the rents, and profits of said property for a term of years not exceeding seven and receiving no bid therefor, did then offer the fee simple of all and singular the said mortgaged property and franchises embraced in the said decree, as an entirety, and said parties of the second part bid therefor, the sum of five thousand dollars and that sum being the highest and best bid for the said property the same was struck off to said parties of the second part as the purchasers thereof. And whereas, the said parties of the second part have fully paid the said sum so bid by them as aforesaid in accordance with the provisions of the said decree of foreclosure. Now therefore, in consideration of the premises and the payment by said parties of the second part of the purchase money so bid by them as aforesaid, the said John D. Howland as such special commissioner and by virtue of the authority vested in him by the said decree doth by these presents bargain, sell, convey and confirm unto the said George F. Talman, Frederick Schuschardt, James H. Banker, Edward Minturn, Moses Taylor, Charles P. Leverich and John Steward all and singular the property hereinbefore described viz: the entire line of railroad of the said Louisville, New Albany and Chicago Railroad Company running from New Albany in the county of Floyd northwardly through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putman, Montgomery, Tippecanoe, White, Pulaski, Starke and La Porte to Michigan City and being of the length of 288 miles or thereabouts as at present constructed and operated including the right of way and land occupied thereby, the superstructure and tracks thereon, bridges, culverts, fences, depot ground and buildings thereon, engines, tenders, cars, tools, materials, machinery, furniture and
75 all other real and personal property appurtenant to the said line of road in use for the purpose of operating the same together with the franchises to maintain and operate the same, and collect tolls, and income therefrom to have and to hold the same in fee simple unto the parties of the second part and their heirs and assigns forever.

In witness whereof, the said party of the first part hath hereunto subscribed his name and affixed his seal the day and year first above written.

J. D. HOWLAND, [SEAL.]
Special Commissioner.

STATE OF INDIANA, }
Floyd County, } ss:

Before me a notary public in and for said State and county personally appeared the within named John D. Howland, and as such special commissioner duly acknowledged that he executed and delivered the within conveyance to and for the uses and purposes therein expressed.

Witness my hand and official seal this 27th day of December, 1872.

[L. S.] WM. J. HISEY,
Notary Public.

Recorded April 24" 1873, at 3 o'clock p. m.
Attest: WM. W. McCULLOCH, *R. W. C.*

76 *Articles of Association.*

Plaintiff offered in evidence a certified copy of the articles of association of the Louisville, New Albany and Chicago Railway Company, dated January 7th, 1873. (Identified by the reporter as Exhibit C.)

The defendants objected to the introduction of the articles of association, because they are immaterial, and there is nothing in the foreclosure and the proceedings had thereunder that gives this corporation any title to the lands in controversy.

The court overruled the objection, to which ruling of the court, the defendants at the time, excepted, and the said articles of association being then read and given in evidence, were in the words and figures following, to-wit:

EXHIBIT C.

UNITED STATES OF AMERICA, }
State of Indiana. }

OFFICE OF SECRETARY OF STATE.

I, William D. Owen, secretary of state of the State of Indiana, hereby certify that the annexed pages contain a full, true and complete copy of the articles of association or agreement in writing, of Louisville, New Albany and Chicago Railway Company, with the several certificates thereon, filed January 7, 1873, as the same appears on file, as the law directs, in this office.

In testimony whereof, I hereunto set my hand and affix the great seal of the State of Indiana. Done at my office, in the city of Indianapolis, this 17" day of December, A. D. 1898.

[L. S.] WILLIAM D. OWEN,
Secretary of State.

77 Know all men by these presents. that, whereas the New Albany and Salem Railroad Company, was organized in the year A. D. 1847, under and in pursuance of a public act of the General Assembly of the State of Indiana, approved Jan. 28, 1842, and under the provisions of said act and the amendments thereto, the said railroad company located and constructed a line of railway

from the city of New Albany in the county of Floyd northwardly through the counties of Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, and La Porte to Michigan City, all in the said State of Indiana and being of the length of about 288 miles

And whereas, the said corporation as by law thereto authorized. under its corporate seal executed and delivered to one Douw. D, Williamson as trustee two certain trust mortgages, embracing and conveying all and singular the said line of railroad, together with all its property, equipment and appurtenances, and the franchise to maintain and operate the same and levy and collect tolls therefrom, which said mortgages were severally dated on February 8, 1851, and February 14, 1852, and were given to secure the payment of two issues of bonds which were executed and put into circulation for value by the said railroad company.

And whereas, on the 24th day of October, 1859, the corporate name of said company was changed under the authority of the statutes of the State of Indiana, to the Louisville, New Albany and Chicago Railroad Company.

And whereas the said Douw. D. Williamson trustee as aforesaid departed this life in the year 1869, and the duties powers and estate created and vested by the said two mortgages, became vested in the alternate trustee named in the said two trust mortgages viz.
78 Charles E. Bill of the city and State of New York.

And whereas, on the 21st day of November A. D. 1872, the said Charles E. Bill being such trust mortgagee as aforesaid by the consideration of the circuit court of the United States within and for the district of Indiana duly recovered a decree of foreclosure of the said two mortgages hereinbefore mentioned, and an order for the sale of the entire line of said railroad from New Albany to Michigan City as aforesaid together with its property, equipment and appurtenances of every description, and also the franchises to operate the same, and levy and collect tolls thereon and whereas on the 27th day of December A. D. 1872 all and singular the said line of railroad from New Albany to Michigan City inclusive as then located, constructed and operated, including the right of way and the land occupied thereby together with the superstructure and tracks thereon, bridges, culverts, fences, depot grounds and buildings thereon, engines, tenders, cars, tools, materials, machinery, furniture and all other real and personal property appurtenant to the said line of road and used for the purpose of operating the same, together with the franchise to operate the same and levy and collect tolls therefrom under the original charter of said railroad company and the subsequent amendments thereto, was sold at the court house door in the city of New Albany, Indiana by John D. Howland, special commissioner in due accordance with the requirements of said decree of November 21, 1872, and as provided by law, and was then and there purchased by George F. Talman, Frederick Schuchardt, James H. Banker, Moses Taylor, Edward Minturn,

Charles P. Leverich and John Steward, with the design of forming a corporation under the laws of the State of Indiana as is hereinafter stated.

79 And whereas, the said John D. Howland as such special commissioner did on the said 27th day of December 1872, execute acknowledge and deliver to said purchasers a deed of conveyance of all and singular the property so purchased by them as aforesaid, by virtue whereof the title to all said property and franchises has become vested in fee simple absolute in the said purchasers who are subscribers hereunto.

Now therefore, for the purpose of carrying out the design of the said purchase and forming a corporation of the State of Indiana which shall of right possess and enjoy all the powers, rights, privileges, immunities and franchises in respect to the said line of railroad so conveyed to and vested in the undersigned which were at any time possessed and enjoyed by the said New Albany and Salem (lately the Louisville, New Albany & Chicago) Railroad Company, under its original charter and the amendments thereto, the said purchasers, under the authority and in accordance with the provisions of the statutes of the State of Indiana in relation to the purchase of railroads and especially under the requirements of an act of the General Assembly of the State of Indiana entitled, "An act to authorize regulate and confirm the sale of railroads, to enable purchasers of the same to form corporations, and to exercise corporate powers and to define their rights, powers and privileges; to enable such corporations to purchase and construct connecting and branch roads and to operate and maintain the same," approved March 3rd, 1865—and a certain act supplemental thereto which was approved December 20, 1865, do by these articles of association by them subscribed, form and constitute themselves into a corporation which shall be called

"The Louisville, New Albany & Chicago Railway Company,

80 and the said corporation by the name aforesaid, on the filing of these articles in the office of the secretary of state shall by virtue thereof have, possess and enjoy the said line of railroad from New Albany to Michigan City and all its appurtenances and equipments as specifically set out in the conveyance to the undersigned as the exclusive property of the said corporation hereby created, and the said corporation shall also have exercise and enjoy all and singular the powers, rights, privileges, immunities and franchises in respect to said line of railroad as completely in every respect as the same were held, exercised and enjoyed by the said Louisville, New Albany & Chicago Railroad (formerly the New Albany and Salem Railroad) Company, under its original charter and the amendments thereto, and as the same were vested in the undersigned by the conveyance aforesaid.

The number of directors shall be thirteen (13) and the following persons are constituted the first board of directors to continue in office until the 1st day of January 1874, George F. Talman, Moses Taylor, Frederick Schuchardt, James H. Banker, Edward Minturn,

Charles F. Leverich, John Steward, James F. Joy, George S. Schuyler, John Jacob Astor, Roswell G. Ralston, Johnathan T. Wells and Isaac Bell.

The capital stock of the said corporation shall be and is hereby fixed at the sum of three millions of dollars, divided into thirty thousand shares of one hundred dollars each.

In witness whereof the said incorporators have hereunto set their hands and seals this 31st day of December 1872.

GEO. F. TALMAN. [SEAL.]
FRED'K SCHUCHARDT. [SEAL.]
CHAS. P. LEVERICH. [SEAL.]

81

JOHN STEWARD. [SEAL.]
MOSES TAYLOR. [SEAL.]
EDWARD MINTURN. [SEAL.]
JAMES H. BANKER. [SEAL.]

STATE OF NEW YORK, }
City and County of New York, } ss:

Before me a notary public in and for said county and city, personally appeared the above named incorporators, George F. Talman, Frederick Schuchardt, James H. Banker, Moses Taylor, Edward Minturn, Charles P. Leverich, and John Steward and acknowledged the execution of the above articles of association as their act and deed for the purposes therein specified.

Witness my hand and official seal this 2nd day of January, 1873.

[SEAL.] W. D. SEARLS, *Notary.*

Filed Jan'y 7, 1873. John G. Farquhar, secretary of state. Box 406. Paper 7. Articles of association of the Louisville, New Albany and Chicago Railway Company. Received Jan. 7, 1873. Office sect. state.

82 *Articles of Consolidation.*

Plaintiff offered in evidence a certified copy of the articles of consolidation between the Louisville, New Albany and Chicago Railway Company and the Chicago and Indianapolis Air-line Railway Company, dated August 10th, 1881. (Identified by the reporter as Exhibit D.)

Defendants objected to the introduction of the articles of consolidation, because the instrument does not tend to prove any right that the plaintiff has to the property in controversy and does not tend to support any of the issues in the case.

The court overruled the objection, to which ruling of the court the defendants, at the time, excepted.

And the said articles of consolidation being then read and given in evidence were in the words and figures following, to-wit:

EXHIBIT D.

Certificate.

STATE OF INDIANA, } ss:
Office of the Secretary of State, }

I, William D. Owen, secretary of state of the State of Indiana, do *hereby certify that the attached is a full, true and complete copy of* the articles of consolidation of the Louisville, New Albany & Chicago Railway Company and the Chicago & Indianapolis Air Line Railway Company as filed in this office on August 10, 1881, and which articles of consolidation now form a part of the records of this office, in accordance with the laws of the State of Indiana in such case made and provided.

In witness whereof, I have hereunto set my hand and affixed
83 the seal of the State of Indiana, at the city of Indianapolis, this 17" day of December, A. D. 1898.

WILLIAM D. OWEN,
[L. S.] *Secretary of State.*

Articles of Consolidation Between the Louisville, New Albany and Chicago Railway Company and the Chicago and Indianapolis Air Line Railway Company.

This agreement made this fifth day of May A. D. 1881, between the Louisville, New Albany and Chicago Railway Company, as party of the first part and the Chicago and Indianapolis Air Line Railway Company, as party of the second part—

Witnesseth, that whereas the party of the first part is a corporation existing under the laws of the State of Indiana with a share capital of $3,000,000 and has constructed owns and operates a line of railroad extending from the city of New Albany, Floyd county, Indiana to Michigan City, La Porte county in the same State, and

Whereas, the said party of the second part is a consolidated corporation, organized and existing under the laws of the States of Indiana and Illinois with a share capital of $2,000,000, and has in process of construction a line of railway extending from the city of Indianapolis, Marion county, Indiana, to a connection with a railroad at, or near Glenwood, Cook county Illinois, so as to secure connection with and entrance to the city of Chicago, Illinois, and

Whereas, the lines of railroad so described as aforesaid and belonging respectively to said parties of the first and second parts, intersect and connect with each other at Bradford, White county, Indiana,

so as to allow the free interchange of traffic between each
84 other, and if joined, united and consolidated, would form a line of railroad connected from the cities of New Albany and Indianapolis, Indiana, to the city of Chicago in the State of Illinois, and

Whereas, the union, merger and consolidation of said two lines of railroad appurtenances and franchises so as to form a corporation under one ownership and control, will enable the said properties to be operated with more efficiency and economy, and with greater benefit to the respective shareholders and to the public, and

Whereas, the said parties hereto have full powers and authority under the laws of the State of Illinois and Indiana, to consolidate their stocks and properties, and it is desired to effect such union, merger and consolidation between the said parties of the first and second parts upon such equitable terms and basis as would recognize the rights of the shareholders in said two corporations and equalize the dissimilar values of the two different lines of railroads and properties

Now therefore, in consideration of the premises and to effectuate the purposes aforesaid, the said parties of the first and second parts do hereby mutually covenant and agree with each other as follows, viz:

Article 1. The said parties of the first and second parts do hereby, subject to the approval of their respective boards of directors and shareholders as hereinafter specified, severally agree to and with each other, to unite, merge and consolidate the said two corporations and all their railroads, properties, stocks and franchises of every kind so as to create and form a consolidated corporation, to be called and known as the "Louisville, New Albany and Chicago Railway Company" on the terms and conditions hereinafter specified—that is to say.

85 Article 2. By this agreement and act of consolidation, when ratified and approved by the respective boards of directors and the stockholders of both parties hereto, the said parties of the first and second parts, convey, assign transfer to and vest in the consolidated corporation, so created, all and singular the respective lines of railroads, with all their lands, rights of way, leases, leasehold rights, equipments, machinery, contract rights, licenses, stations, moneys, books, papers, records, choses in action rights, franchises, privileges and immunities and all property of every kind, real personal or mixed and whether held in possession, reversion or remainder, and wherever situate; and the said parties hereto, do agree and declare, that all and singular such railroads, properties and franchises shall, from the date of the consummation of this consolidation, thenceforth be held, owned, managed, enjoyed and aliened by the said consolidated corporation hereby created, and to and for its own use, benefit and behoof, to all intents and purposes, as fully and completely as the said respective parties hereto can or do now own, hold, use possess, enjoy or control the same, and the

parties hereto do respectively covenant and agree each with the other, that they will execute, seal acknowledge and deliver to such consolidated corporation, and and all such further or other deeds, assignments or writings as may be necessary or proper to carry out the true intent and meaning of this agreement, and by way of further assurance of title to said property, assets and franchises, or any of them.

Article 3. The said consolidated corporation hereby created shall be vested, with all the rights, privileges, immunities and franchises which usually pertain to railroad corporations under the
86 laws of the respective States of Illinois and Indiana wherein the lines of its railroad are situate, and shall also be vested with all and singular the rights, powers, privileges, immunities, capacities and franchises which before the execution of these articles was lawfully possessed or exercised by either of the parties hereto.

Article 4. The capital stock of the consolidated corporation hereby created shall be, until changed by some manner according to law, five million dollars ($5,000,000), being the sum total of the existing share capital of the first and second parties hereto and it shall be divided into fifty thousand shares of one hundred dollars par value each, and each holder of the stock in either of the parties hereto shall from the date of the legal consummation of this consolidation, be held and considered a shareholder in the consolidated corporation, which is created by these presents, in the proportion, to the extent and in the manner in the next articles stated.

Article 5. In order to equalize the different values of the respective stocks of the parties of the first and second parts it is agreed, that the stockholders of the party of the first part shall be entitled to receive for their entire interest legal and equitable in the capital stock of the party of the first part, $3,450,000 of the capital stock of the consolidated corporation being 34,500 shares of the par value of one hundred dollars each, deliverable on the surrender of the stock certificates of the said party of the first part now outstanding to be distributed among them in proportion to the stock held by them in the party of the first part and surrendered by them respectively upon the consolidation.

And likewise it is agreed that the stockholders of the party
87 of the second part, or such person or persons as they may authorize to receive them, shall be entitled to receive for the entire interest of said stockholders, legal and equitable, in the capital stock of the consolidated company $1,550,000 of the capital stock of said consolidated corporation, being 15,500 shares of the par value of one hundred dollars each, deliverable on the surrender of any and all stock certificates of the party of the second part now outstanding.

The certificates of the shares of the capital stock of the consolidated corporation so created shall be issued to the persons entitled thereto on demand and the surrender by them of the certificates held by

them in the capital stock of the parties hereto in the proportion as above recited in this article.

Article 6. It is further distinctly agreed that for the purpose of carrying out the provisions of the pending consolidation contract whereby the line of railroad of the party of the second part is being built the said consolidated corporation as soon as it comes into being, shall issue its coupon bonds to the amount of two millions three hundred thousand dollars, bearing six per cent. interest payable semi-annually, both principal and interest to be payable in gold coin of the United States of the present standard weight and fineness and to be secured by a mortgage to some proper trustee or trustees, which shall be a first lien on the railroad from Indianapolis to its Chicago terminus and the equipment and appurtenances thereto belonging.

Of such bonds one million eight hundred and fifty thousand dollars are to be used in payment under such construction contract and four hundred and fifty thousand dollars of such bonds, for
88 the equipment for said Chicago and Indianapolis division and to the general purposes of said consolidated corporation.

Article 7. The business and affairs of the consolidated corporation hereby created shall be managed by a board of directors to be annually elected according to law on such date and at such place as may be appointed by the by-laws of the consolidated company and until the first election the board of directors of the consolidated corporation shall be composed of the present board of directors of the party of the first part.

Article 8. The present by-laws and the present common or corporate seal of the party of the first part shall be until changed according to law, *be* the by-laws and corporate seal of the consolidated corporation hereby created.

Article 9. The principal place of business and the general office of the consolidated corporation shall be established in the city of Louisville, Kentucky, and the books vouchers, instruments of title, records, cash, evidences of debt, contracts and all papers and documents pertaining to the property or business of either of the parties hereto, shall at once be delivered to the proper officer or agent of the consolidated corporation and the said books records and papers shall be deemed and taken as far as necessary or desired as the records and books of said consolidated corporation.

Article 10. These articles of consolidation shall become consummated and go into effect, and the consolidated corporation so created, shall come into existence only after due and legal ratification of these presents by the respective boards of directors and the shareholders of the parties hereto. It is hereby expressly agreed that the above and foregoing instrument is to be submitted as
89 soon as the same can legally and properly be done to the respective boards of directors and the shareholders of the parties hereto, and if thereupon these presents are not ratified the same are to become void and of no effect.

In witness whereof, we have hereunto set our hands the day and year first above written.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,
By R. S. VEECH, *President.*

[Corporate Seal.]

Attest: W. H. LEWIS, *Sec.*

CHICAGO & INDIANAPOLIS AIR LINE RAILWAY COMPANY,
By P. M. KENT, *President.*

[Corporate Seal.]

Attest: W. A. STARIN, *Sec.*

90 STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Richard S. Veech do hereby certify that I am the president of the Louisville, New Albany and Chicago Railway Company and that the articles of consolidation between the above named corporation and the Chicago and Indianapolis Air Line Railway Company of which the foregoing and annexed paper is a full and true copy were approved by the board of directors of said Louisville, New Albany & Chicago Railway Company on the 7th day of June, 1881, who at a meeting on that day reccommended to the stockholders of said last named company to adopt the said consolidation and at the same time directed the president to call a meeting of stockholders to be held not less than thirty days after due notice according to the laws of Indiana.

And I do further certify that at a meeting of the stockholders of said Louisville, New Albany and Chicago Railway Company duly called and held on the 18th day of July, 1881, the said articles of consolidation were duly approved by the affirmative vote of twenty two thousand and seventeen shares being all the shares represented at said meeting and constituting more than two-thirds of all the stock of said corporation, and by the resolution and proceedings of said stockholders' meeting the board of directors, were authorized to carry out and consummate the said consolidation.

And I do further certify, that at a meeting of the directors of the said Louisville, New Albany and Chicago Railway Co. held on the 19th day of July, 1881, the said directors authorized and directed me as president of said last named company to consummate the said consolidation, according to the terms of the said articles of consolidation annexed hereto as aforesaid.

91 Wherefore, I, do further certify and declare by virtue of the said approval and ratification of the said articles of consolidation and by virtue of the authority in me vested as aforesaid,

the said articles of consolidation of which the said annexed and foregoing paper is a full and true copy has become fully approved and consummated and has gone into effect and is the true contract of consolidation.

R. S. VEECH.

Subscribed and sworn to before me, this sixth day of August, A. D. 1881.

Witness my hand and seal of office.

[SEAL.] S. G. LEATHEM,
Notary Public, New York County.

STATE OF ILLINOIS, }
Cook County, } ss:

I, Phineas M. Kent do hereby certify that I am president of the Chicago & Indinapolis Air Line Railway Company and that the within and foregoing articles of consolidation were duly and legally ratified at a special meeting of the stockholders of said corporation duly called and held at Chicago, Ill. on May 11, 1881, by the affirmative vote of 20,000 shares being all the stock of said corporation.

Witness, my hand and seal of said corporation, this 8th day of August, 1881.

[SEAL.] PHINEAS M. KENT.

Attest.
WM. A. STARIN, *Secretary.*

Sub-cribed and sworn to before me a notary public in and for said State and county Aug. 8th, 1881.

92 Witness my hand and official seal.

[SEAL.] WM. A. STARIN,
Notary Public.

Fled August 10. 1881.
E. R. HAWN, *Sec'y of State.*

Box 660. Pa. 16.

Articles of consolidation between the Louisville, New Albany & Chicago Railway Company and the Chicago & Indianapolis Air Line Railway Co.

93 *Mortgage Rec. No. 25, p. 194.*

Plaintiff offered in evidence Mortgage Record No. 25, at page 194 (it being admitted by the parties that the records introduced in evidence are records on file in the office of the recorder of White county, Indiana.

Defendants objected to the introduction of this mortgage in evidence, on the ground that there is nothing described in the mort-

gage except the property then occupied and used by the railway company for railroad purposes and such other property as it might thereafter acquire for railroad purposes, and does not describe this property, and for the further reason that the owner of these lands was no party to this mortgage.

The court overruled the objection, to which ruling of the court, the defendants, at the time, excepted.

And the said mortgage being then read and given in evidence was in the words and figures following, to-wit:

This indenture, made and entered into this first day of January, one thousand eight hundred and eighty-six, by and between the Louisville, New Albany and Chicago Railroad Company, hereinafter called the railway company, a corporation duly created and existing under the laws of the States of Indiana and Kentucky, party of the first part, and the Farmers' Loan and Trust Company, a corporation duly created and existing under the laws of the State of New York, and John H. Barker of Michigan City, in the State of Indiana, hereinafter called the trustees, parties of the second part:

Whereas, the party of the first part owns and is operating a railroad in the State of Indiana, which is composed of a line from New Albany, on the Ohio river to Michigan City, on Lake Michigan, hereinafter called the main-line, and a line from Indianapolis to a junction with the Chicago and Western Indiana railroad, at
94 a point on the State line between Indiana, and Illinois about twenty miles southwest of Chicago, hereinafter called the air-line, together with certain proprietary and leasehold interests in the franchises and railroad of the said Chicago and Western Indiana Railroad Company, and terminal facilities of the said company in the city of Chicago, and certain terminal rights, facilities and approaches in the other cities above mentioned and in the city of Louisville, in the State of Kentucky, and between said city of Louisville, and the city of New Albany; and

Whereas, the said railroad is subject to the following liens, that is to say:

First. The main-line is subject to the lien of a mortgage, made July first, 1880, by the party of the first part to John C. New, of Indianapolis, and Washington C. De Pauw of New Albany, in the State of Indiana, as trustees, to secure three million dollars—$3,000,000—of bonds, bearing date July first, 1880, payable July first, 1910, with interest at the rate of six per cent. per annum.

Second. The air-line is subject to the lien of a mortgage, made August 10, 1881, by the party of the first part to John C. New of Indianapolis, as trustee to secure two million three hundred thousand dollars—$2,300,000—of bonds, bearing date August 10th, 1881, and payable August first 1911, with interest at the rate of six per cent. per annum.

Third. The whole road is subject to the lien of a mortgage made February first, 1883, by the party of the first part to the Farmers'

Loan and Trust Company, of New York, W. M. Lewis, of New Albany, as trustees, to secure one million dollars—$1,000,000,—of bonds, bearing date February first, 1883, and payable February first, 1888, with interest at the rate of six per cent. per annum.

Fourth. The whole railroad is subject to a lien of a mort-
95 gage, made by the party of the first part, made March 24th, 1884, to the Farmers' Loan and Trust Company and W. M. Lewis, of New Albany, as trustees, to secure three million dollars—$3,000,000,—of bonds, bearing date March 24th, 1884, and payable April first, 1914, with interest at the rate of six per cent. per annum.

One million dollars,—$1,000,000—of the last mentioned three million dollars,—$3,000,000—of bonds are required by the terms of the said mortgage, to be delivered to the Farmers' Loan and Trust Company as trustees, to be ex-hanged for bonds secured by and under the one million dollar—$1,000,000,—mortgage of February first, 1883, above described and have been so delivered.

Fifth. The whole of said liens, after making the provision last aforesaid, amount to eight million three hundred thousand dollars,—$8,300,000,—

Whereas, at a meeting of the board of directors of the said railway company, duly and legally called and convened the said board being fully authorized by law so to do, did resolve in substance and effect, for the purpose of providing means to satisfy and discharge the liens aforesaid, and refund the said indebtedness, and to borrow money for the objects of the organization of the said company, that the railway company, under its corporate seal, make and issue, from time to time, its certain other bonds and obligations, to the extent of ten millions of dollars,—$10,000,000,—and thereby become indebted to divers persons, bodies politic or corporate who shall become holders thereof, the said bonds to be ten thousand in number, numbered consec-tively from one to ten thousand inclusive, each of them to be for the sum of one thousand dollars—$1,000—

and to bear date on the first day of January, 1886, and to be
96 payable on the first day of April, 1916, in gold coin of the United States, of the present standard weight and fineness, with interest thereon to be payable on the first days of April and October in each year, on presentation of the coupons to be attached thereto, and to be in the form and contain the provisions following, that is to say:

UNITED STATES OF AMERICA, *State of Indiana.*

Louisville, New Albany and Chicago Railway Company.

$1,000. $1,000.

Consolidated Mortgage Bond.

For value received, the Louisville, New Albany and Chicago Railway Company hereby promises to pay to the Farmers' Loan and Trust Company and John H. Barker, trustees, or bearer, at the com-

pany's office, in the city of New York, on the first day of April, which will be in the year one thousand nine hundred and sixteen, one thousand dollars, in United States gold coin of the present standard weight and fineness with interest payable in like gold coin at the rate of six per centum per annum, semi-annually, free of United States Government tax, on the first days of April and October, in each year until the principal is paid on the presentation and surrender of the respective coupon hereto annexed, the principal and interest of this bond being payable without relief from valuation or appraisement laws. This bond is one of a series of ten thousand bonds, of like form and tenor, the payment of which is secured by a mortgage, or deed of trust, to the Farmers' Loan and Trust Company and John H. Barker, as trustees, bearing even date, herewith and duly reported, to which mortgage, or deed of trust, and the provisions and conditions thereof, reference is hereby made,

This bond shall not become obligatory until the certificate
97 hereon endorsed shall be signed by the Farmers' Loan and
Trust Company, trustees. This bond may be registered at the office of the party of the first part, or at its agency in the city of New York at the option of the holder, and thereafter, unless at any time registered payable to bearer, will only be payable to such person as on this bond shall appear, from time to time, to be the last duly registered transferee or owner thereof.

In witness whereof, the Louisville, New Albany and Chicago Railway Company has caused this bond to be signed by its president and secretary and its corporate seal to be hereto affixed, this first day of January one thousand eight hundred and eighty six.

——— ———, *President.*
——— ———, *Secretary.*

And whereas, at the meeting and for the purposes aforesaid, the said board of directors did further resolve that for the purpose of equally securing all of the said bonds the railway company, under its corporate seal, should make and deliver to the trustees a mortgage, or deed of trust, conveying, assigning and transferring to the trustees in trust, all its railroad and franchises, as hereinafter described as security for the payment of said bonds, and each and all of them, and the interest to accrue thereon, upon the terms and conditions hereinafter contained, which were and are, by the said board of directors, deemed to be just and equitable.

Now, therefore, this indenture witnesseth, that the Louisville, New Albany and Chicago Railway Company, party of the first part, in consideration of the premises and of one dollar to it in hand paid,

at or before the ensealing and delivery of these presents, the
98 receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, set over, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, set over, release, convey, and confirm unto the Farmers' Loan and Trust Company and John H. Barker, parties hereto of the second part;

and to the survivor of them, and to their successor or successors in the trust herein and hereby created and declared, all the railway of the party of the first part, in the city of Louisville, in the State of Kentucky, and extending from New Albany on the Ohio river, to Michigan City in the State of Indiana, and from the city of Chicago, in the State of Illinois, to the Indiana State line, under a leasehold right, and from said State line to the city of Indianapolis, in the State of Indiana, including the railway lying and being in all of said cities, and terminal rights and facilities and approaches thereto, the same being about four hundred and seventy-five miles in length, and running through the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, La Porte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton, and Lake, in said State of Indiana, and Jefferson county in said State of Kentucky, and Cook county in said State of Illinois, and also all branches thereof, including all the property of every sort or nature now owned by said railway company, and all that it may in the future acquire for the purposes and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured
99 materials, coal, wood, and supplies of every kind, belonging or appertaining to the railway company, also all the tolls, incomes, issues, and profits, arising out of the said property and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part, in and to any and all real estate belonging to the said party of the first part, also all leasehold lands, with the buildings thereon erected; it being the true intent and meaning of these presents, that the said railway company shall and doth convey to the said trustee, all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company or which may at any time hereafter during the continuance of this trust, be acquired by the said railway company for purposes connected with or appertaining to the railroads or railways above mentioned or described; and also all choses in action of every kind and description including bills receivable, book accounts, traffic balances, all books of record, and all accounts of every kind and description, all papers, maps, inventories, and documents, in anywise referring or relating to the property or franchises hereby conveyed; and also all franchises and property, and all personal rights or interest in any franchises or property, of every kind or description, real, personal or mixed, and wherever the same may be situate that may at any time, before or

after the date of this indenture, be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways; all of which it is hereby covenanted
100 shall inure by way of accretion to the benefit and advantage of said trustee, and by way of further and better security, this conveyance being made subject to the liens of certain mortgages heretofore made by the party hereto of the first part, namely: a mortgage dated July first, 1880, made to John C. New and Washington C. De Pauw as trustees, covering a portion of the above described premises; a certain other mortgage, dated August 10th, 1881, made to John C. New trustee, covering another portion of the above-described premises; and also a mortgage made by the party of the first part hereto to the parties of the second part hereto, as trustees, dated February first, 1883,

To have and to hold, all and singular, the above described premises to the trustees, their and each of their successors or successor in the trust hereby created, to the only proper use and behoof of the said trustees, their and each of their successors or successor, in trust nevertheless for the uses and purposes hereinafter expressed, namely:

First. To secure the payment of the bonds of the said railway company to be issued as herein recited, and for the use and benefit of the person or persons, firm or firms, bodies politic or corporate, who shall at any time become the purchasers or holders, owners or bearers, of either or any of the said bonds, subject to the terms, provisions and stipulations in the said bonds contained, which bonds, however, shall be equal in priority of lien, at whatever time the same may respectively have been issued.

Second. Until default shall be made in payment of the principal or interest secured by said bonds, or some of them the railway company shall be permitted to possess, manage, operate and enjoy all and singular the mortgaged premises, with their appurte-
101 nances, and to take and use the rents, incomes, profits, and issues thereof, in the same manner and to the same effect as if this indenture had not been made.

Third. In case default in the payment of interest on any of the bonds secured by this indenture shall be made and shall continue for the space of six months, and such payment shall be duly demanded, then the trustees may, and if requested in writing by the holders of the majority of the bonds secured hereby and then outstanding, shall enter upon all and singular the mortgaged premises and every part thereof, and possess, operate, use and enjoy the same, and upon demand in writing being made by the trustees, the railway company shall immediately surrender possession of all and singular the mortgaged premises and property, of every sort and description, to the trustees. It shall also be lawful for the trustees, in case such default shall be made and continue as aforesaid, and payment be demanded and in case such request of bondholders be made as aforesaid, they shall do so, to sell and dispose of all the premises and property of every sort and description, hereby con-

veyed at public auction, in the city of New York or in Chicago, Illinois, as the trustees may elect—such election, however, being subject to a right on the part of a majority of the bondholders to designate at which of the two said places the sale shall be made,—having first given notice of the time and place of such sale by advertisement published not less than once a week, for three months next preceding the time specified for the sale, in one or more newspapers published in the city of New York, and in one or more newspapers published in the city of Chicago, Illinois, and to adjourn the said sale from time to time, by announcement at the time and place advertised, without further advertisement, and to make
102 and deliver to the purchaser or purchasers, good and sufficient deed or deeds in fee simple, which sale being made to the highest bidder, shall be a perpetual bar, both at law and in equity, against the railway company and all other persons lawfully claiming the above described premises and property or any part thereof, or any lien upon or interest in the same, through or from the said railway company, and after deducting from the proceeds of such sale a just allowance for all expenses thereof, including reasonable attorney and counsel fees, and any other necessary expenses incurred by the trustees in executing their trust, including their own reasonable compensation, to apply the proceeds to the payment of the principal of such of the aforesaid bonds as may be at the time outstanding and unpaid, whether the same shall or shall not have previously become due, and of the interest which shall at that time have accrued on said principal and be unpaid, without discrimination or preference, but ratably to the aggregate amount of such unpaid principal and such accrued and unpaid interest; and if after satisfaction thereof, a surplus shall remain to pay the same over to the railway company.

Fourth. In case default in the payment of interest on any of the bonds secured by this indenture shall be made and shall continue for the space of six months, and such payment shall be duly demanded, then the trustees, if they shall elect to do so, may, and if requested in writing by the holders of one-half of the bonds secured hereby, and then outstanding, shall apply to any court or courts having proper jurisdiction in the premises for a foreclosure of this deed of trust or mortgage and sale, of the mortgaged premises and property, and for the appointment in the meantime of a re-
103 ceiver of the mortgaged premises under this indenture, the trustees, to have the right to nominate and designate the person to be appointed receiver, and so far as lawfully may be done, to control and direct, the general course of the administration of the mortgaged premises by and on the part of such receiver. In the event of such right of foreclosure and sale accruing for non-payment of interest, immediately thereupon the whole amount of the principal of the bonds secured by this indenture and then outstanding, shall, at the option of the trustees, become due and payable, and this provision is expressly declared not to be in the nature

of a penalty for a breach of condition or for the non-payment of interest, but to be a provision which is essentially necessary to carry out the objects and purposes of the parties hereto.

Fifth. If the trustees shall enter upon the mortgaged premises and take possession, control and management thereof, under any preceding provision, they shall apply and administer the net revenue and income arising from the mortgaged premises during such possession, in the discharge and satisfaction of interest, or interest and principal, secured by this indenture, as the same may become due and payable and in due order of priority; during such possession, occupation, control and management, the trustees shall only be liable for the exercise of good faith and of reasonable diligence and all expense, loss and damage of every kind and nature growing out of such possession, control and management, shall, to the extent that any liability is incurred thereby, constitute a charge upon the mortgaged premises exclusively. The trustees, during such possession shall have the right and power to manage the property and premises, and may enter into any and all contracts proper, ordinary and usual in such cases whether by lease or otherwise, and may charge the same as a lien upon the mortgaged premises or any part thereof, and generally may do and perform such things in the premises as the railway company itself might do and perform had it remained in undisputed possession and control of the premises.

104

Sixth. If a receiver of the mortgaged premises shall be appointed under the provisions of this indenture, all the expenses incident to such appointment, including all his lawful obligations and expenses, shall constitute a lien upon the mortgaged premises superior to the lien of any of the bonds secured by this indenture. Such receiver shall have the power to enter into contracts and obligations, and to do all other things incident to the management of the property and which the railway company would have had power to do had it remained in possession of the mortgaged franchises premises and property. The right of action under this indenture is vested exclusively in the trustees, and under no circumstances shall any bondholder or any number of bondholders have any right to institute an action or other proceedings on or under this indenture for the purpose of enforcing any remedy herein and hereby provided; and all actions and proceedings for the purpose of enforcing the provisions of this indenture shall be instituted and conducted by the trustees, according to their sound discretion until the owners and holders of a majority of the bonds secured hereby and then outstanding shall unite in requesting in writing the trustees to do or refrain from doing some particular act or acts, or to pursue or to refrain from pursuing any particular line of conduct or policy connected with the enforcement of such security, accompanying such request with evidence to the satisfaction of the trustees that they are such actual owners of bonds, and also with satisfactory in-

demnity to the trustees for all expenses and costs of every
105 kind, and also for all possible claims for damages.

Seventh. In case of any sale of the premises embraced in this mortgage under a decree of any court having jurisdiction thereof, based on the foreclosure of this mortgage, or in pursuance of advertisement without such decree as aforesaid, the trustees may, in their discretion, purchase, and they are hereby fully authorized and empowered to purchase the premises, property and franchises embraced herein, for the use and benefit of the holders of the then outstanding bonds secured by this mortgage, and having so purchased the said premises, property and franchises, the right and title thereto shall vest in the trustees, and no bondholder shall have any claim thereto or to the proceeds thereof, except for his *pro rata* share of the proceeds of such purchased premises, property and franchises, as represented in a new company or corporation to be formed for the use and benefit of the holders of the bonds secured hereby and then outstanding; and the trustees may take such lawful measures as they may deem for the interest of the bondholders to organize or procure the organization of a new company or corporation for the benefit of the holders of the bonds secured by this indenture and then outstanding. The said new company or corporation shall be organized upon such terms, conditions and limitations, and in such manner as the holders of a majority of the then outstanding bonds secured by this mortgage shall in writing request or direct; and provision *made*, if such majority shall so elect, but not otherwise, be made in the organization of such new company or corporation for the interests of any or all the holders of the junior obligations of the railway company, and for its stockholders and simple contract creditors, or any of them, and the trustees so purchasing shall
106 thereupon convey the premises, property and franchises, so purchased by them, to such new company or corporation.

Eighth. In case it shall become necessary to institute proceedings for the foreclosure and sale of the mortgaged premises, or should any such sale take place under the power above set forth, the trustees shall aid, promote, and encourage in all lawful ways any plan for the reorganization of the mortgaged premises and property, suggested for the benefit and advantage of the holders of bonds secured hereby, that they may deem most beneficial for such bondholders, and in case of any such sale the same shall be conducted under the general control and management of the trustees, and the trustees shall receive and distribute the proceeds of sale, except as otherwise provided in and by the plan of reorganization in pursuance of which such sale may be had it being understood and agreed that the trustees shall be guided and controlled in all such proceedings by the terms and provisions of any scheme of reorganization which shall receive the assent of the holders of a majority of the bonds secured by this indenture, and then outstanding, and shall be approved by the trustees,

Ninth. The railway company reserves and retains for itself, its

successors and assigns, the right to sell, lease, and otherwise dispose of, free from the lien of this mortgage and deed of trust, any real or personal property now covered or affected, or hereafter to be covered or affected by this mortgage, which may no longer be required by the railway company for the purposes of its incorporation; provided, however, that the proceeds of such sale, lease, or disposition shall be received by the trustees and be applied by them to the purchase of other property in the name of the railway company,
107 to be subject to the lien hereof or be applied to the purchase of bonds secured hereby, which said bond- shall be canceled.
108 Any conveyance by the railway company of any such real or personal property, in which the trustees shall join, shall convey the same free and discharged of any lien hereby created, if a recital to such effect shall be contained in such conveyance, but not otherwise; and in case of such recital, this indenture shall, as to the property so conveyed, be thereafter void and of no effect; and no obligation shall be imposed on the purchaser to see to the application of the purchase money.

Tenth. No holder of any bond hereby secured shall have recourse for payment to any stockholder of the railway company, or to any person who has ever been such stockholder, or make any demand for the payment of any such bond against any such person under and in pursuance of any law imposing liability upon any stockholders of incorporated companies whether such law be now in force or shall hereafter be enacted, or by reason of any cause whatever; and the railway company hereby expressly waives the benefit of ant appraisal, stay or exemption law that may now or at any time be in force, and consents that any sale that may be had under the provisions of this mortgage shall be had in the same manner and to the same effect, as if such appraisal, stay, or exemption law did not exist.

Eleventh. If the railway company shall well and truly pay the sums of money by the said bonds secured hereby, and the coupons thereto attached, required to be paid by it, which it hereby covenants to do, and shall well and truly keep and perform all the covenants, agreements and undertakings herein and hereby entered into and required to be kept and performed, according to the true intent and meaning of these presents, then, and in that case, the estate, right, title and interest of the trustees in the above described mortgaged property and premises shall cease, determine and
109 become wholly void.

Twelfth. The trustees shall be under no obligation to recognize any person or persons firm or corporation, as holder or holders, owner or owners, of one or more of the bonds secured hereby, or to do, or refrain from doing, any act pursuant to the request or demand of any person or persons, firm or corporation, pro-

fessing or claiming to be such holder or holders, until such supposed holder or holders shall produce the said bonds and deposit the same with the Farmers' Loan and Trust Company, and shall also indemnify and save harmless the trustees, to their full satisfaction, from any and all costs, expenses, outlays, and counsel fees, and any other reasonable disbursements for which they may become liable or responsible on proceeding to carry out such request or demand, and for their reasonable and proper compensation in that behalf. Should any suit or other proceeding be brought in any court against the trustees, as trustees under this indenture, or by reason of any matter or thing connected with the trusts hereby created, or the premises affected hereby, the trustees shall thereupon notify the railway company, of the fact by delivering such notice at the office of the railway company; and the trustees shall thereupon be under no obligation to enter an appearance by counsel, or in any way to appear in and defend the said suit or other proceedings until indemnified to their satisfaction for so doing; but they may appear in and defend the same without indemnity if they shall elect so to do, and be compensated therefor from the trust fund. In any case at any time it shall be necessary and proper for the trustees to make any investigation respecting any fact or facts preparatory to taking or not taking any action, or doing or not doing anything as such trustees, the certificate of the president of the railway company, under the corporate seal, attested by the affidavit of one or more directors of the said corporation, shall be sufficient evidence of such fact or facts to protect the trustees in any action they may take or anything they may do or refrain from doing, by reason of the supposed existence of such facts.

The trustees shall only be responsible for reasonable diligence in the management of the trust, and shall not be answerable in any case for the act or default of any agent attorney or employee selected with reasonable discretion. The trustees shall be entitled to be reimbursed all proper outlays of every sort and nature by them incurred in the discharge of this trust, and to receive a reasonable and proper compensation for any duty they may at any time perform in the discharge of the same, and all such fees, commissions, compensations, and disbursements shall constitute a lien on the mortgaged property and premises.

Thirteenth. In case the office of trustee under this indenture shall become vacant by reason of incapacity, the removal or resignation of the said parties of the second part, or either of them, or any successor, it shall be lawful for the holders of a majority in amount of the bonds hereby secured, and then outstanding, to appoint a successor or successors, by a writing by them signed, and upon such appointment being made, and said trust being accepted and written notice thereof to said railway company, any such successor or successors, substituted trustee or trustees, shall without further act or

deed become vested with all and singular the state, right and power and shall perform all the duties of trustee in like manner and with the same effect as if it, they, or he had been named in this instrument, as trustee or trustees.

111 Fourteenth. The word "trustee," "trustees," or 'successors" wherever used in this instrument, shall mean the trustees under this mortgage for the time being whether original or substituted, with all the powers appertaining to his or their office.

It is further covenanted and agreed between the parties hereto that eight thousand three hundred of the bonds to be issued under and secured by the lien of this mortgage representing eight million three hundred thousand dollars—$8,300,000—of principal, shall be executed and delivered to the Farmers' Loan and Trust Company as trustees, to be certified and used by the said trustees as follows, that is to say,

Three thousand thereof to be exchanged for bonds representing equal amounts of principal secured by and under the above mentioned mortgage for three million dollars,—$3,000,000—upon the main line, dated July first, 1880;

Twenty three hundred thereof to be exchanged for bonds representing equal amounts of principal secured by and under the above mentioned mortgage on the Air-Line, dated August first, 1881;

One thousand thereof to be exchanged for bonds, representing equal amounts of principal secured by and under the above mentioned mortgage on the whole road for one million dollars,—$1,000,000,—dated February first, 1883.

Two thousand thereof to be exchanged for bonds representing equal amounts of principal secured by and under the above mentioned mortgage for three million dollars—$3,000,000,—dated March 24th., 1884.

Such exchanges shall be made and conducted under the terms and subject to such conditions as may be agreed upon between the railway company and Farmers' Loan and Trust Company, and may be made from time to time before or after the maturity of the bonds secured by the said prior mortgages or any of them.

112 The one thousand bonds issued under the three million dollars—$3,000,000,—mortgage of March 24th., 1884 heretofore delivered to the said trust company, to be exchanged for a like amount of bonds under the one million dollar,—$1,000,000—, mortgage of February first, 1883, shall be canceled by the said trust company whenever all of the said eight thousand three hundred bonds under this mortgage have been delivered to said trust company, and all of the remaining two thousand bonds under the said mortgage of March 24th, 1884, have come into the hands of the said trust company by exchange as above provided.

Each of the bonds under any of the said prior mortgages so acquired by exchange, shall be received by the said Farmers' Loan

and Trust Company and shall thereupon be stamped upon the face thereof as payable only to the parties of the second part as trustees, and shall thenceforth be payable only to the said parties of the second part, as trustees, and shall be held by them as collateral security for the payment of all the bonds issued or to be issued under this mortgage, until all the bonds authorized under such prior mortgage, shall have come into the possession of the said Farmers' Loan and Trust Company.

Whenever all of the bonds authorized under any one of the prior mortgages aforesaid shall have come into the possession of the said Farmers' Loan and Trust Company as trustees, as aforesaid, the same shall be canceled, and the mortgage securing the same shall de discharged of record.

The payment of the interest upon all the bonds issued and outstanding under this mortgage shall be deemed a satisfaction of all the interest accrued at the time of such payments upon the bonds so held by the said trustees, and no interest shall be payable
113 upon the bonds so held until after a default in the payment of interest on the bonds secured by this mortgage.

And it is further covenanted and agreed by the railway company, that it will well and truly pay the sums of money in the said bonds, and in each and all of them mentioned, together with the semi-annual interest due and to become due thereon, at the times, and in the manner and at the places specified therein; and further that it will well and truly pay, or cause to be paid, all taxes, charges, rates, levies and assessments imposed, assessed or levied, or which may hereafter be imposed, assessed or levied upon the premises and property hereby mortgaged, conveyed and assigned, or intended so to be, or any part thereof, and shall and will, at its own proper cost, expense and charge, do, or cause to be done all acts and things necessary and proper to be done, or performed, in order to preserve and keep valid and intact this lien or incumbrance upon all and singular the property and premises above described.

And it is further covenanted and agreed by the railway company to and with the trustees, that it will from time to time, and at all times upon reasonable request, make, execute, acknowledge and deliver, at its own expense, all such further acts, deeds, conveyances and assurances in law for the better assuring unto the trustees, upon the trusts and for the purposes herein expressee or intended, all and singular the property of every sort and description hereby mortgaged or conveyed in trust, or appearing, purporting or intended to be, now owned or possessed by or vested in the railway company or *they* may hereafter be owned, possessed, acquired or vested in the railway company, as by the trustees or their counsel learned in law shall be reasonably devised, advised or required.

In testimony whereof, the corporations, parties, hereto have
114 caused their respective corporate seals to be hereto affixed and the same to be duly attested, and the said John H. Bar-

ker hath hereunto set his hand and seal the day and year first above written.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,
By WM. DOWD, *President.*

[Seal of Louisville, New Albany and Chicago Railway Company, Indiana.]

Attest: WM. DULLES, JR.,
Assistant Secretary.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. C. RALSTON, *President.*

[Seal of Farmers' Loan and Trust Company, New York.]

Attest:
WM. H. LEUPP, *Secr'y.*
JOHN H. BARKER. [SEAL.]

115 STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Be it remembered, that on this eighth day of January A. D. 1886, before me, a commissioner of deeds for the States of Indiana, Kentucky, and Illinois, residing in said State, city and county, aforesaid, personally appeared William Dowd, president of the Louisville, New Albany and Chicago Railroad Company, personally known to me to be the president of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said railway company, and by authority of its board of directors, had signed and delivered the said instrument as the free and voluntary act, of the said railway company, for the uses and purposes therein set forth; also personally appeared before me at the same time William Dulles, Jr., assistant secretary of the said railway company, personally known to me to be such assistant secretary, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said railway company, and by like authority had signed the said instrument and affixed thereto the official corporate seal of said railway company, as the free and voluntary act of the said Louisville, New Albany and Chicago Railway Company for the uses and purposes therein set forth, that he knew the corporate seal of said company, and that the seal so affixed, is said corporate seal.

And also at the same time before me, personally came Rosewell G. Ralston, president of the Farmers' Loan and Trust Company, personally known to me to be the president of said company, and personally known to me to be the real person whose name is
116 subscribed to the foregoing instrument, and acknowledged that he, in behalf of said trust company and by authority of its board of directors had signed and delivered the said instrument as

the free and voluntary act of the said trust company, for the uses and purposes therein set forth; and also personally appeared before me at the same time William H. Leupp, secretary of the said trust company, personally known to me to be the secretary of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said trust company, and by like authority had signed the said instrument and affixed thereto the official seal of said trust company as the free and voluntary act of the said Farmers' Loan and Trust Company for the uses and purposes therein set forth; that he knew the corporate seal of said company and that the seal so affixed is said corporate seal.

And I further certify that this instrument of writing from the Louisville, New Albany and Chicago Railroad Company to the Farmers' Loand and Trust Company, and John H. Barker, trustees, was at the time and place first above mentioned, produced to me by the president and secretary of the said railway company, and acknowledged as aforesaid.

In witness whereof, I have hereunto set my hand and affixed my official seal this 8th., day of January, 1886.

CHARLES NETTLETON,
Commissioner for the State of Indiana in New York.

[Seal of Charles Nettleton, Commissioner for Indiana in New York.]

CHARLES NETTLETON,
Commissioner for the State of Kentucky in New York.

[Seal of Charles Nettleton, Commissioner for Kentucky in New York.]

117

CHARLES NETTLETON,
Commissioner for the State of Illinois in New York.

[Seal of Charles Nettleton, Commissioner for Illinois in New York.]

STATE OF INDIANA, }
County of La Porte, } *ss:*

Be it remembered that on the 11th., day of January A. D. 1886, before me Jared H. Orr, a notary public duly commissioned and qualified, personally appeared John H. Barker, to me personally known to be the real individual described in, and who executed the foregoing instrument, and acknowledged that he had executed the same as his voluntary act and deed.

Witness my hand and official seal at Michigan City, Ind., this 11th., day of January, A. D., 1886.

JARED H. ORR,
Notary Public.

[Seal of Jared H. Orr, Notary Public, La Porte, Indiana.]

STATE OF INDIANA, } ss:
County of White, }

The foregoing instrument was filed for record in the recorder's office of White county on the 13th., day of January, A. D., 1886, at 10 o'clock in the forenoon of that day and duly recorded in Book 25, on page 194 *et seq.*

JAMES P. SIMONS,
Recorder of White County.

118 Plaintiff offered in evidence the original of the mortgage made by the Louisville, New Albany & Chicago Railway Company to the Central Trust Company of New York dated May 1st, 1890, and the certificate of its recording in Pulaski county, dated May 21st, 1890 at 2 o'clock in the afternoon, in Book U, of Mortgages, at page 41.

Defendants objected to the introduction of this mortgage in evidence on the ground that there is nothing described in the mortgage except the property then occupied and used by the railway company for railroad purposes, and such other property as it might thereafter acquire for railroad purposes, and does not describe this property; and defendants objected further on the ground that the owner of these lands was no party to this mortgage. The court overruled the objection, to which ruling of the court, the defendants, at the time, excepted. And the said mortgage (identified by the reporter as Exhibit E:), being then read and given in evidence, was in the words and figures following, to-wit:

EXHIBIT E.

This indenture, made and entered into this first day of May, one thousand eight hundred and ninety by and between the Louisville, New Albany and Chicago Railway Company, hereinafter called the railway company, a corporation duly created and existing under the laws of the State of Indiana, party of the first part, and the Central Trust Company of New York a corporation duly created and existing under the laws of the State of New York, hereafter called the trust company, and John H. Stotsenburg of New Albany, in the State of Indiana, parties of the second part;

Whereas, the party of the first part owns and is operating
119 a system of railroads in the State of Indiana, about 512 miles in length which is composed of a line from New Albany on the Ohio river to Michigan City on Lake Michigan, hereinafter called the main line; and a line from Indianapolis to a junction with the Chicago and Western Indiana railroad at a point on the State line between Indiana and Illinois about twenty miles southeast of Chicago, hereinafter called the air-line, together with certain

proprietary and leasehold interests in the franchises and railroad of the said Chicago and Western Indiana Railroad Company, and the Belt Railway Company of Chicago, and in the terminal facilities of the said companies in and near the city of Chicago, Illinois; and all its real estate, buildings, tracks, trackage and terminal rights, facilities and approaches in the other cities above mentioned and in the city of Louisville, in the State of Kentucky, and between said city of Louisville and the city of New Albany and in the city of Indianapolis, Indiana; and is also the exclusive owner of the Bedford and Bloomfield, and the Orleans, West Baden and French Lick Springs railroads.

Whereas, the said system of railroads is subject to the following present liens, that is to say:

First. The main line from New Albany to Michigan City is subject to the lien of a mortgage, made July 1st, 1880, by the party of the first part to John C. New, of Indianapolis, and Washington C. De Pauw of New Albany, in the State of Indiana, as trustees, to secure three million dollars ($3,000,000) of bonds, bearing date July 1st, 1880, and payable July 1st, 1910, with interest at the rate of six per cent. per annum, hereafter called main line bonds.

Second. The air-line from Indianapolis to the State line of Illinois is subject to the lien of a mortgage made August 10th, 1881, by the party of the first part to John C. New, of Indianapo-
120 lis, as trustee, to secure two millions three hundred thousand dollars ($2,300,000) of bonds, bearing date August 10th, 1881, and payable August 1st, 1911, with interest at the rate of six per cent. per annum, hereafter called air-line bonds.

Third. The whole system of railroad is subject to the lien of a mortgage made January 1st, 1886, by the party of the first part to the Farmers' Loan and Trust Company of New York, and John H. Barker, of Michigan City, as trustees, to secure now outstanding bonds amounting to four million seven hundred thousand dollars ($4,700,000), bearing date January 1st 1886, and payable April 1st 1916, with interest at the rate of six per cent. per annum, hereafter called consolidated bonds.

Fourth. The whole of the said mortgage liens amount in the aggregate to ten million dollars ($10,000,000).

Whereas, at a meeting of the stockholders of the said railway company, party of the first part, duly and legally called and held on March 22, A. D. 1890 a preamble and resolutions were adopted by the affirmative votes of 32641 shares of stock, being more than a majority of all the shares of stock in the said company, which read as follows:

121 Whereas, it is very desirable for this company to fund its present bonded obligations into a single security bearing a lower rate of interest than those now outstanding and also to improve the condition of its railway, increase its equipment, buildings and facilities and also to construct and acquire from time to time as author-

ized by law, other extensions and railroads, so as to increase and develope the traffic of the system.

Therefore, resolved, that for the purpose of paying, funding, exchanging and retiring the mortgage bonds of this company now outstanding, and for constructing and acquiring extensions and additional lines of railroad and for increasing the equipments, shops, buildings, sidings, appurtenances and facilities and improving the condition of this company's railroad, the board of directors, and president and secretary of the Louisville, New Albany & Chicago Railway Company, be and they are hereby authorized and directed to issue the corporate coupon bonds of the said company to be designated general mortgage gold bonds, bearing interest at the rate of 5 per cent. per annum, and payable in fifty (50) years from May 1, 1890, to the amount of twenty-five thousand dollars (25,000) per mile of main track of the present system of its railway, that is to say, five hundred and twelve (512) miles of which ten million dollars ($10,000,000) shall be reserved and used exclusively for the purpose of paying off, purchasing, funding, exchanging and retiring the present outstanding bonds of this company to a like amount which are secured by the different mortgages or deeds of trust upon some portion or all of its said railway; and also from time to time issue such other bonds of the same class to the amount, and at the rate of twenty five thousand dollars ($25,000) par value for each and every mile of main track of additional railroad
122 actually owned by this company either in the State of Indiana, or elsewhere, whether acquired by construction, purchase, consolidation or otherwise; and for the purpose of securing the payment of said bonds, the president and secretary are authorized and directed to execute in the corporate name of this company, and on its behalf and under its corporate seal and to acknowledge and deliver unto such trustees as the board of directors shall select and appoint, a mortgage or deed of trust, bearing date, May 1, 1890, conveying by way of mortgage all the railroad of this company now constructed and in operation, including all its branches, sidings and leasehold rights and also all railroads, extensions and branches which may be hereafter created, built, purchased or acquired by this company, whether by construction, purchase, consolidation or otherwise and whether situate within or without the State of Indiana, together with all the equipment and appurtenances at any time belonging to this company, or in use on its lines of railway wherever situate, (and all and singular its property of every kind and nature, real, personal and mixed, now owned or at any time to be hereafter acquired, in possession or expectancy, including the corporate and other franchises of the company).

Resolved further, That the board of directors of this company may adopt such form of bonds and mortgages or deed of trust as they may think proper to carry into execution the general resolve and authority aforesaid. And,

Whereas, at a meeting of the board of directors of said railway

company, party of the first part, duly and legally called and held on March 22, A. D. 1890, the said board in pursuance of the vote and directions of the said stockholders' meeting did adopt the following resolves which are at large spread upon the records of such meeting, viz.;

123 "Be it therefore resolved,

"In execution of the authority and direction of the above and foregoing action of the stockholders of this corporation, the board of directors do hereby empower and instruct the president and secretary of this corporation,

"First. To prepare, sign, seal and execute an issue of its coupon bonds of the general form and tenor following, subject only to the necessary variations as to amount and serial numbers, each of said bonds being for the sum of one thousand dollars, or five hundred dollars, as the board may determine, viz.;

UNITED STATES OF AMERICA, *State of Indiana.*

No. —. $1,000.

General Mortgage Gold Bond.

The Louisville, New Albany and Chicago Railway Company, a corporation of the State of Indiana, for value received hereby agrees to pay to the Central Trust Company of New York, or the bearer hereof, the sum of one thousand dollars, in gold coin of the United States of the present standard of weight and fineness, at the office or agency of said railway company, in the city of New York, on the first day of May, in the year one thousand nine hundred and forty, with interest thereon in the meantime at the rate of five per cent. per annum, payable semi-annually in like gold coin, on the first days of May and November, in each year, at the said New York office or agency, upon presentation of the coupons hereto annexed as they severally become due. The principal and interest on this bond is payable without relief from valuation or appraisement laws. In case of default in the payment of any coupons for a period of six months after presentation and demand, the principle of this
124 bond may be declared to be due in the manner and with the effect and subject to the conditions contained in the mortgage or deed of trust which secures the payment hereof, as hereinafter mentioned.

This bond may be registered at the general office of the said railway company, or at its New York agency, at the option of the holder and thereafter, unless at any time registered as payable to bearer, will only be payable to such person as on this bond shall be designated from time to time as the last duly registered transferee or owner thereof.

This bond is one of a series of coupon bonds of like tenor and effect, and numbered consecutively from one upward and are issuable by the said railway company under and in accordance with

the terms and conditions of the mortgage or deed of trust hereinafter mentioned, for the purpose of retiring, funding and redeeming the existing bonded indebtedness of the said railway company, improving and equipping its railroad and acquiring by construction or otherwise, extensions and branches thereof, whether in the State of Indiana or elsewhere. The total amount of bonds of this series authorized to be issued by said railway company is expressly limited by said mortgage or deed of trust as follows:

First. A present issue of twelve million, eight hundred thousand dollars, being at the rate of $25,000 per mile of main track of the present system of owned railroad of 512 miles, of which amount ten million dollars of bonds, numbered from 1 to 10,000, both inclusive, shall be reserved and used exclusively for the purpose of purchasing, exchanging or retiring the present outstanding mortgage bonds of said railway company to a like amount, in the manner recited in the mortgage or deed of trust.

Second. Such additional issue from time to time as prescribed in said mortgage or deed of trust as will amount to twenty-five
125 thousand dollars par value for every mile of main track of additional railroad, extension or branch line, either constructed or acquired and owned by said railway company, whether by purchase, consolidation or otherwise and situate in the State of Indiana or elsewhere.

The payment of each and all of the bonds of this series, together with interest thereon, without reference to the time when any of such bonds shall be actually issued or certified is secured by a mortgage or deed of trust of even date herewith, duly executed and delivered by the said railway company to the Central Trust Company of New York, and John H. Stostenburg of Indiana, as trustees, convey all and singular the railway, equipment, appurtenances, property, leasehold rights, terminal facilities, assets and franchises of the said railway company which it now owns and all railroads, extensions, branches, equipment, property and appurtenances which it may at any time hereafter own or possess, together with all privileges and franchises thereto appertaining as in said mortgage or deed of trust is more particularly specified and described.

This bond shall not be valid, or entitled to any benefit of such mortgages security until it has been duly certified by the trustees as provided in the said mortgage or deed of trust.

In witness whereof, the said Louisville, New Albany and Chicago Railway Company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and attested by its secretary, and has caused each of the said coupons to be attested by the engraved signature of its secretary on this first day of May A. D. one thousand eight hundred and ninety.

126 LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY,

By —— ——, *President.*

[SEAL.]

Attest: ——, *Secretary.*

The coupons to be attached to such bonds shall be in the following form, and each shall have the signature of the secretary engraved thereon;

$25.

The Louisville, New Albany and Chicago Railway Company on November 1st, A. D. 1890, will pay to bearer twenty-five dollars, at its office or agency in New York, being six months' interest on its general mortgage gold bonds No. —.

—— ——, *Secretary.*

Each of such bonds shall bear thereon a certificate to be duly signed by the said Central Trust Company of New York trustee, in the following form:

Trustee's Certificate.

This is one of a series of bonds numbered from one upward, issued by the Louisville, New Albany and Chicago Railway Company, referred to in the mortgage or deed of trust in said bond described; and this bond has been issued in accordance with the provisions of said mortgage or deed of trust.

THE CENTRAL TRUST COMPANY
OF NEW YORK, *Trustees,*
By —— ——, *Vice President.*

127 Second. The president and secretary of this company are hereby further empowered and instructed to prepare, in paper form, a mortgage or deed of trust whereby, for the security and payment of the aforesaid issue of bonds and interest, this corporation shall convey and mortgage unto the Central Trust Company of New York and John H. Stotsenburg, of Indiana, as trustees, all and singular, the railroads, property, assets, equipment, appurtenances, leasehold rights, terminal facilities and franchises of this company at present owned, and all railroads, extensions, branches, property, equipment, appurtenances, leasehold rights, terminal facilities and franchises which it may hereafter own, either within or without the State of Indiana, and thereupon to sign, seal with the corporate seal, acknowledge and deliver said mortgage or deed of trust unto said trustees as the act and deed of this corporation, for the uses and purposes therein expressed.

Now, therefore, this indenture witnesseth: That the said Louisville, New Albany and Chicago Railway Company party of the first part, in consideration of the premises and of one dollar, to it in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, set over, released, conveyed and confirmed and by these presents doth grant, bargain, sell, assign, set over, release, convey and confirm unto the Central Trust

Company of New York, and John H. Stotsenburg, of the State of Indiana, parties of the second part, and to the survivor of them, and to their successors or successors in the trust herein and hereby created and declared, all the present and in future to be acquired railway system and property of the said party of the first part of every kind and nature and however owned, held, leased or enjoyed, together with all the equipment, appur-
128 tenances and franchises now owned or at any time hereafter to be acquired by it, being more particularly described as follows: All the present line of railway, extending from New Albany, Indiana, to Michigan City in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield rail road, extending from Bedford to Switz City, Indiana, and also its other proprietary and owned line of railroad called the Orleans, West Baden and French Lick Springs railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal facilities in the city of Louisville, Kentucky, and *and* also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the city of Chicago, or elsewhere in the State of Illinois; and also its real estate, trackage, leasehold, contract rights, and terminal properties, stations, sidings, and franchises in the city of Indianapolis, Indiana, and also all its leas-holds and contract rights, trackage and terminal facilities vested in the party of the first part, by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the city of New Albany, Indiana, and the city of Louisville, Kentucky, the before mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and
129 operated by it, being about five hundred and twelve miles in length, and situate in the counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, Laporte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton, and Lake, in the State of Indiana, and Cook county, in the State of Illinois, and Jefferson county, in the State of Kentucky; and also all other railroads, extensions and branch lines which the railway company, party of the first part, may at any time hereafter create, own or acquire, whether by construction, purchase, consolidation or otherwise, whether within the State of Indiana, or in any other State, including and conveying by these presents all the property of every sort or nature, real, personal and mixed, now owned by said railway company and all that it may in the future add, construct, or ac-

quire, for the purpose of and connected with or appertaining to the railroads or railways above mentioned and described whether now owned or hereafter to be constructed or acquired together with all the lands, tracks, lines, rails, bridges, ways buildings, shops, tanks, piers, wharves, structures, erections turn-tables, fences, walls, fixtures, franchises, privileges and right of the railway company, and also all locomotives engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal wood, supplies of every kind belonging or appertaining to the railway company; also all the tools, incomes, issues and profits, arising out of the said party and its operation, and all rights to receive and recover the same, also all the estate, right, title and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the buildings thereon erected; it being the true intent and meaning of these pres-
130 ents *and* that the said railway company, party of the first part, shall and doth convey to the said trustees, all and all manner of franchises, of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property of whatever nature or description the same may be, at the date of these presents, owned or possessed by the said railway company, or which may, at any time hereafter, during the continuance of this trust, be acquired by the said railway company, for purposes connected with or appertaining to the railroads or railways above mentioned or described, or intended to be hereby conveyed, whether now in existence or at any time hereafter to be constructed or acquired, whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents, in anywise referring or relating to the property or franchise hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind and description real, personal or mixed, and wherever the same may be situate, that may, at any time, before or after the date of this indenture be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways, either now owned or hereafter to be acquired, all of which it is hereby covenanted shall inure, by way of accretion, to the benefit and advantage of said trustees and by way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind
131 all railroads, real and personal property, chosen in action, contract rights and franchises which the said railway company now owns, or at any time hereafter may own, as fully and to the same extent as if all such property were now in existence and

owned by the said railway company, and were specifically described herein and conveyed hereby.

To have and to hold, all and singular, the above described premises to the trustees, their and each of their successor or successors in the trust hereby created, to the only proper use and behoof of the said trustees, their and each of their successor or successors in trust, for the security of the bonds and coupons to be issued hereunder and for the uses and purposes hereinafter expressed, namely:

Article I.

Until default shall be made in the payment of the principal or interest secured by said bonds, or some of them and such default shall have continued for a period of six months, as hereinafter set forth, the railway company shall be permitted to possess, manage, operate and enjoy all and singular the mortgaged premises, with their appurtenances and to take, demand, use and enjoy the rents, incomes, profits and issues of all and singular the premises and property hereby conveyed in the same manner and to the same effect as if this indenture had not been made.

Article II.

It being as hereinbefore recited one of the objects and intentions of this indenture to borrow money by means of bonds to be issued hereunder, for the purpose of paying off, funding, exchanging and retiring the present outstanding bonds of the railway company secured by mortgages or deed of trust upon some portion or all
132 of the property as hereinbefore recited, it is therefore covenanted and agreed that ten thousand of the bonds to be issued hereunder and secured hereby, representing ten million dollars ($10,000,000) of principal obligation, and being numbered from 1 to 10,000, both inclusive, shall from time to time be signed, sealed, and executed by said railway company, and thereupon certified by the trust company and used exclusively for the purpose of exchanging for bonds of the railway company now outstanding representing an equal amount of principal and secured by some one of the three several mortgages or deeds of trust hereinbefore recited, that is to say:

Of the issue of its bonds amounting to three million dollars ($3,000,000), secured by its before mentioned mortgage, dated July 1, 1880, and covering the mainline of railroad.

Of an issue of its bonds amounting to two million three hundred thousand dollars ($2,300,000), secured by its before mentioned mortgage, dated August 10, 1881, and covering the air-line division of such railroad.

Of an issue of its bonds called consolidated bonds, amounting to four million seven hundred thousand dollars ($4,700,000), secured by its before mentioned mortgage, dated January 1, 1886, and covering its entire line of railroad and appurtenances.

Such bond exchanges shall be made and conducted upon the terms and methods and subject to such conditions as may be agreed upon between the railway company and the said trust company.

Whenever any of the mortgage bonds of the railway company of either of the three classes aforesaid and now outstanding shall be exchanged for a bond of the series to be issued under this indenture, the said trust company shall thereupon stamp upon the
133 face of each of said retired and exchanged bonds that the same is payable only to it as trustee hereunder, and shall thereafter hold the same in trust uncancelled, but wholly as collateral security for the payment of all the bonds issued or to be issued under this mortgage. Each and every of such exchanged bonds so held by said trust company and each and every of the present oustanding three mortgages, or deeds of trust executed by the railway company shall remain in full force and effect in all respects until all the entire series of outstanding bonds of either one of said three different issues shall by purchase or exchange be retired and be delivered unto the said trust company and until such time each and every of such bonds and the mortgages to secure the same shall retain all their liens, priorities and legal rights as fully as if this instrument had not been executed. The trust company as the holder in the trust of such uncancelled bonds for the security and protection of the bonds from time to time issued under this mortgage shall have and exercise the same rights to enforce the mortgage under which any of said uncancelled bonds were issued, equally with any other holder of bonds of that class.

Whenever the entire series of bonds authorized and now outstanding of either of the three classes of securities designed to be so retired and exchanged shall actually have come by purchase, exchange or retirement into the possession of the said trust company as aforesaid, then it shall take the necessary and proper means to cause the mortgage or deed of trust executed by the railway company to secure that class of bonds, of which the whole issue has been exchanged, to be satisfied and cancelled of record and shall thereupon also cause the said whole issue of bonds of that class in its hands to be cancelled and destroyed.

134 It is expressly agreed that pending the ultimate cancellation of such exchange bonds the payment of interest upon all the bonds which may be issued and outstanding under this mortgage, shall be deemed a satisfaction of all interests accrued up to the time of such payment, upon any and all of the exchanged and retired bonds held in trust by the trust company and no interest shall be deemed or held to be payable upon any of such exchanged, retired and uncancelled bonds until after default in the payment of interest on the bonds secured by this mortgage.

Article III.

The said trust company shall, upon the execution, delivery and record of this mortgage, and upon the request of the board of directors

or the executive committee of the railway company, certify bonds hereunder to the amount, at face value, of two million eight hundred thousand ($2,800,000) dollars, such bonds being numbered from 10,001 upward and shall deliver the same to the said railway company.

Any additional bonds shall be certified and issued hereunder subject to the following conditions and limitations, viz:

Whenever any mileage of main track of railroad, in addition to its present system hereby conveyed, shall be from time to time acquired or built by the said railway company, either by purchase, construction, consolidation or otherwise, and whether within or without the State of Indiana, and when such fact shall be made to appear to the said trust company by a certificate of the president or vice-president of the railway company, and an affidavit of its chief engineer, showing the exact length of the main track of additional railroad or railroads so acquired or built and the termini
135 thereof and in what State and counties the same is situate and upon the recording of this mortgage or deed of trust, and such other proper deed of further assurance in such counties as may be deemed necessary, according to the laws of the State or States in which such additional railroad shall be situate, said trust company shall, upon the request of the board of directors or the executive committee of the said railway company, certify and deliver to the latter such further issue of bonds hereunder, at the rate of, but in no event exceeding, the amount at face value of twenty-five thousand dollars per mile of the main track of railroad so acquired or created, provided, however, that if any additional railroad acquired by the said railway company, either by purchase, consolidation or otherwise, shall be already subject to any mortgage which is unsatisfied, then the amount of any such outstanding bonds, secured by such unsatisfied lien shall be stated in the certificate of the president or vice-president of the said railway company and thereupon the trust company shall only certify hereunder and deliver bonds to such an amount when added to such outstanding bonds secured by the unsatisfied mortgage, on such acquired additional railroad as will not exceed a total issue of twenty five thousand ($25,000) dollars per mile of such main track so acquired.

The certificate of the president or vice-president and the affidavit of the chief engineer of such railway company shall in all cases be conclusive as to the mileage and liens recited and shall constitute full and complete authority for the said trust company, to certify and deliver bonds hereunder at the rate per mile herein provided for.

It is also expressly agreed that the said trust company shall from time to time, on request of the board of directors or executive
136 committee of the said railway company, certify and deliver bonds hereunder (subject always to the limitation of twenty five thousand ($25,000) dollars per mile of main track) to effect the simultaneous exchange or retirement of a like amount of any bonds

which may constitute a prior and specific lien on any additional railroad property at the time when it may be hereafter acquired by the said railway company, party of the first *part*.

Article IV.

In case default in the payment of interest of any of the bonds secured by this indenture, shall be made and shall continue for the space of six months after such payment shall be duly demanded, then the trustees may, and if requested in writing by the holders of the majority of the bonds secured hereby and then outstanding, shall enter upon all and singular the mortgaged premises and every part thereof, and possess, operate, use and enjoy the same; and upon demand in writing be made by the trustees, the railway company shall immediately surrender possession of all and singular the mortgaged premises and property of every sort and description to the trustees. It shall also be lawful for the trustees, in case such default shall be made and continue as aforesaid and payment be demanded and in case such request of bondholders be made, as aforesaid, they shall do so, to sell and dispose of all the premises and property of every sort and description, hereby conveyed, at public auction, in the city of New York or in Chicago, Illinois, as the trustees may elect (such election, however, being subject to a right on the part*y* of a majority in amount of the bondholders to designate at which of the two said pal*c*es the sale shall be made), having first given notice of the time and place of such a sale by advertisement published not less than once a
137 week, for three months next preceding the time specified for the sale, in one or more newspapers published in the city of New York, and in one or more newspapers published in the city of Chicago, Illinois, and to adjourn the said sales from time to time, by announcement at the time and place advertised, without further advertisement, and to make and deliver to the purchaser or purchasers good and sufficient deed or deeds, in fee simple, which sale being made to the highest bidder, shall be a perpetual bar both at law and in equity against the railway company and all other persons lawfully claiming the above described premises and property, or any part thereof, or any lien upon or interest in the same, through or from the said railway company, and after deducting from the proceeds of such sale a just allowance for all expenses thereof, including reasonable attorney and counsel fees, and any other necessary expenses incurred by the trustees in executing their trusts, including their own reasonable compensation, to apply the proceeds to the payment of the principal of such of the aforesaid bonds as may be at the time outstanding and unpaid, whether the same shall or shall not have previously become due according to their tenor, and of the interest which shall at that time have accrued on said principal and be unpaid, without discrimination or preference, but ratably according to the aggregate amount of such unpaid principal

and such accrued and unpaid interest, and if after satisfaction thereof a surplus shall remain, to pay the same over to the railway company.

Article V.

In case default in the payment of interest on any of the bonds secured by this indenture shall be made and shall continue for
138 the space of six months after such payment shall be duly demanded, then the trustees if they shall elect so to do, may, and if requested in writing by the holders of one-half of the bonds secured hereby and then outstanding shall apply to some court or courts having proper jurisdiction in the premises for a foreclosure of this deed of trust or mortgage and sale of the mortgaged premises and property therein embraced, and for the appointment in the meantime of a receiver of all the mortgaged premises under this indenture whether now owned or hereafter to be acquired. In the event of such right of foreclosure and sale accruing for non-payment of interest, immediately thereupon the whole amount of the principal of the bonds secured by this indenture, and then outstanding, shall at the option of a majority in amount of the holders of all bonds issued hereunder and then outstanding to be expressed in writing to the trustees, become at once due and payable.

Article VI.

If the trustees shall enter upon the mortgaged premises and take possession, control, and management thereof under any preceding provision, they shall apply and administer the net revenue and income arising from the mortgaged premises during such possession, in the discharge and satisfaction of interest, or interest and principal, secured by this indenture, as the same may become due and payable and in due order of priority. During such possession, occupation, control, and management, the trustees shall only be liable for the exercise of good faith and of reasonable diligence and all expense, loss and damage of every kind and nature growing out of such possession, control and management shall, to the extent that any liability is incurred thereby, constitute a charge upon the mortgaged premises exclusively.
139 The trustee during such possession shall have the right and power to manage the property and premises and may enter into any and all contracts proper, ordinary and usual in such cases and generally do and perform such things in the premises as the railway company itself might do and perform had it remained in undisputed possession and control of the said property.

Article VII.

And right of action under this indenture is vested exclusively in the trustees and under no circumstances shall any bondholder or

any number of bondholders have any right to institute an action or other proceeding on or under this indenture for the purpose of enforcing any remedy herein and hereby provided; and all actions and proceedings, whether by suit, entry or otherwise, for the purpose of enforcing the provisions of this indenture shall be instituted and conducted by the trustees according to their sound discretion until the owners and holders of a majority of the bonds secured hereby and then outstanding shall unite in requesting in writing the trustees to do or refrain from doing some particular act or acts, or to pursue or to refrain from pursuing any particular line of conduct or policy connected with the enforcement of such security, accompanying such request with evidence to the satisfaction of the trustees that they are such actual owners of bonds and also with satisfactory indemnity to the trustees for all expenses and costs of every kind and also for all possible claims for damages; in which event the trustees shall conform to and carry out such written instructions and such written request and direction, and the acts of the trustees done in execution thereof shall be binding on all holders of bonds issued hereunder.

140

Article VIII.

In case of any sale of the premises embraced in this mortgage under a decree of any court having jurisdiction thereof, based on the foreclosure of this mortgage, or in pursuance of advertisement without such decree as aforesaid, the trustees may, in their discretion, purchase, and they are hereby fully authorized and empowered to purchase the premises, property and franchises embraced herein, for the use and benefit of the holders of the then outstanding bonds secured by this mortgage and having so purchased the said premises, property and franchises, the right and title thereto shall vest in the trustees, and no bondholders shall have any claim thereto or to the proceeds thereof, except for his *pro rata* share of the proceeds of said purchased premises, property and franchises, as represented in a new company or corporation, to be formed for the use and benefit of the holders of the bonds secured hereby and then outstanding; and the trustees may take such lawful measures as they may deem best for the interest of the bondholders, to organize or procure the organization of a new company or corporation for the benefit of the holders of the bonds secured by this indenture and then outstanding. The said new company or corporation shall be organized upon such terms, conditions and limitations and in such manner as the holders of a majority of the then outstanding bonds secured by this mortgage shall in writing request or direct; and provision may, if such majority shall so select, but not otherwise, be made in the organization of such new company or corporation for the interests of any or all of the holders of junior obligations of the railway company and for its stockholders and simple contract creditors or any

of them, and the trustees so purchasing shall thereupon con-
141 vey the premises, property and franchises, so purchased by them, to such new company or corporation.

Article IX.

The railway company reserves and retains for itself its successors and assigns the right to sell, lease, and otherwise dispose of, free from the lien of this mortgage, or deed of trust, any real or personal property now covered or effected, or hereafter to be covered or effected, by this mortgage, which may no longer be required by the railway company, for the purposes of its incorporation; provided however, that the proceeds of such sale, lease or disposition, shall be received by the trustees, if deemed necessary for the protection of the bonds issued hereunder, and be applied by them to the purchase of other property in the name of the railway company, to be subject to the lien hereof, or be applied to the purchase of bonds secured hereby, which said bonds shall be thereupon cancelled. Any conveyance by the railway company of any such real or personal property, in which the trustees shall join, shall convey the same free and discharged of any lien hereby created, if a recital to such effect shall be contained in such conveyance, but not otherwise; and in case of such recital this indenture shall as to the property so conveyed, be thereafter void and of no effect, and no obligation shall be imposed on the purchaser to see — the application of the purchase money.

Article X.

No holder of any bond hereby secured shall have recourse for payment to any stockholder of the railway company, or to any person who has ever been such stockholder, or make any demand
142 for the payment of any such bond against any such person under and in pursuance of any law imposing liability upon any stockholders of incorporated companies, whether such a law be now in force or shall hereinafter be enacted, or by reason of any cause whatever, and the railway company hereby expressly waives the benefit of any appraisal, stay or exemption law that may now or at any time be in force, and consents that any sale that may be had under the provisions of this mortgage shall be had in the same manner, and to the same effect, as if such appraisal, stay or exemption law did not exist.

Article XI.

If the railway company shall well and truly pay the sums of money due upon the said bonds secured hereby, and the coupons thereto attached, required to be paid by it, which it hereby covenants to do, and shall well and truly keep and perform all the covenants, agreements and undertakings herein and hereby entered into and required to be kept and performed according to the true intent

and meaning of these presents, then in that case, the estate, right, title, and interest of the trustees in the above described mortgaged property and premises shall cease, determine and become wholly void.

The trustees shall only be responsible for reasonable diligence in the management of the trust and shall not be answerable in any case for the act or default of any agent, attorney or employé selected with reasonable discretion. The trustees shall be entitled to be reimbursed for all proper outlays of every sort and nature, by them incurred in the discharge of this trust and to receive a reasonable and proper compensation for any duty they may at any time perform in the discharge of the same; and all such fees, com-
143 missions, compensations and disbursements shall constitute a lien on the mortgaged property and premises.

Article XII.

In case the office of trustee under this indenture shall become vacant by reason of incapacity, removal or resignation of the said parties of the second part, or either of them, or any successor, it shall be lawful for the holders of a majority in amount of the bonds hereby secured and then outstanding, to appoint a successor or successors, by a writing by them signed and upon such appointment being made and said trust being accepted and written notice thereof to said railway company, any such successor or successors, substituted trustee or trustees, shall, without further act or deed, become vested with all and singular, the estate, right and powers, and shall perform all the duties of trustees in like manner and with the same effect as if it, they or he had been named in this instrument as trustee or trustees.

The word "trustee," "trustees," or "successors," wherever used in this instrument, shall mean the trustees under this mortgage for the time being, whether original or substituted with all the powers appertaining to its, his or their office.

Article XIII.

The railway company hereby agrees that it will well and truly pay the sum of money in the said bonds and in each and all of them mentioned, together with the semi-annual interest due and to become — thereon, at the time and in the manner and at the places specified therein; and further that it will well and truly pay, or cause to be paid, all taxes, charges, rates, levies and assess-
144 ments imposed, assessed or levied, or which may hereafter be imposed, assessed or levied, upon the premises and property hereby mortgaged, conveyed and assigned, or intended so to be, or any part thereof, and shall and will, at its own proper cost, expense and charge, do or cause to be done, all *acts* and things necessary and proper to be done or performed, in order

to preserve and keep valid and in tact this lien or incumberance upon all and singular the property and premises above described. The said railway company further agrees that it will, at all times hereafter maintain an office or agency in the city of New York for the registration of and the payment of interest upon the bonds issued hereunder.

Article XIV.

It is expressly agreed that no bond of this issue shall be valid until the certificate on the bank thereof has been duly signed by the said trust company and that all bonds certified and issued hereunder shall have equal rights and security, no matter when the same are issued.

Article XV.

If the railway company or its successors, shall well and truly pay, or cause to be paid, the several principal sums of money evidenced by the bonds legally issued at any time hereunder and the coupons thereto attached, as they severally mature, according to the true intent and meaning of these presents, then and in such case the estate, right, title and interest of the trustees, parties of the second part, in and to each and every part of the property hereby mortgaged or intended to be, shall at once, and without further act or deed, cease and determine and this indenture shall thenceforth become void and of no effect.

145 And it is further covenanted and agreed, by the railway company to and with the trustees, that it will, from time to time and at all times, upon reasonable request, make execute, acknowledge and deliver, at its own expense, all such further acts, deeds, conveyances and assurances in law for the better assurance unto the trustees, upon the trusts and for the purposes herein expressed or intended, all and singular the property of every sort and description hereby mortgaged or conveyed in trust, or appearing, purporting, or intended to be, now owned, or possessed by, or vested in the said railway company, or that may hereafter be owned, possessed, acquired or vested in the railway company, as by the trustees of their counsel learned in the law shall be reasonably devised, advised or required.

In witness whereof, the said Louisville, New Albany and Chicago Railway Company, the said party of the first part has caused these presents to be signed by its president, sealed with its corporate seal, and attested by its secretary; and to testify their acceptance of the trust hereby created, the said Central Trust Company of New York has caused this instrument to be signed in its behalf by its president, sealed with its corporate seal and attested by its secretary, and

the said John H. Stotsenburg has hereunto affixed his hand and seal the day and year first above written.

LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY,
By WM. L. BREYFOGLE, *President.*

Witness:
JOHN MARSHALL.
JOHN B. HUGHES.

Attest:
[L. S.] W. H. LEWIS, *Secretary.*

CENTRAL TRUST COMPANY OF NEW YORK,
By F. P. OLCOTT, *President.*

146 Attest:
[L. S.] C. H. P. BABCOCK, *Secretary.*

Accepted.

JOHN H. STOTSENBURG.

STATE OF ILLINOIS, }
County of Cook, } ss:

Be it remembered, that on this third day of May, A. D. 1890, before me, a notary public, residing in said State and county personally appeared William L. Breyfogle, president of the Louisville, New Albany and Chicago Railway Company, personally known to me to be the president of said company and personally known to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said railway company, and by authority of its board of directors, had signed and delivered the said instrument, as the free and voluntary act of the said railway company, for the uses and purposes therein set forth; also personally appeared before me at the same time William H. Lewis, secretary of the said railway company, personally known to me to be such secretary, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said railway company and by like authority has signed the said instrument, and affixed thereto the official corporate seal of the said railway company, as the free and voluntary act of the said Louisville, New Albany and Chicago Railway Company for the uses and purposes therein set forth, that he knew the corporate seal of said company and that the seal so affixed, is said corpo*real* seal.

In witness whereof, I have hereunto set my hand, and affixed my official seal this third day of May, 1890.

147 [L. S.]

WILLIAM S. KINNAN,
Notary Public.

STATE OF INDIANA, } ss:
County of Floyd, }

The foregoing instrument was filed for record in the recorder's office of Floyd county, on the seventh day of May, A. D. 1890, at two o'clock in the afternoon of that day, and duly recorded in Book 20 of Mortgages, on page one and following.

CHARLES W. SCHINDLER,
[L. S.] *Recorder of Floyd County.*

STATE OF INDIANA, } ss:
County of Clarke, }

The foregoing instrument was filed for record in the recorder's office of Clarke, county, on the seventh day of May, A. D. 1890, at four o'clock in the afternoon of that day, and duly recorded in Book 18 of Mortgages, on page 129 and following.

CHRISTOPHER PEASELEY,
[L. S.] *Recorder of Clarke County.*

STATE OF INDIANA, } ss:
County of Washington, }

The foregoing instrument was filed for record in the recorder's office of Washington county, on the 8th day of May, A. D. 1890, at 9½ o'clock in the forenoon of that day, and duly recorded in Book 76 of Mortgages, on page 304 and following.

J. S. HAMILTON,
[L. S.] *Recorder of Washington County.*

148 STATE OF INDIANA, } ss:
County of Orange, }

The foregoing instrument was filed for record in the recorder's office of Orange county on the ninth day of May, A. D. 1890, at 6 o'clock in the afternoon of that day, and duly recorded in Book 9 of Mortgages, on page 291 and following.

WILLIAM W. WORRILL,
[L. S.] *Recorder of Orange County.*

STATE OF INDIANA, } ss:
County of Lawrence, }

The foregoing instrument was filed for record in the recorder's office of Lawrence county, on the ninth day of May, A. D. 1890, at 10 o'clock in the forenoon of that day, and duly recorded in Book 13 of Mortgages, on page 495 and following.

JAMES H. McPHEETERS,
[L. S.] *Recorder of Lawrence County.*

STATE OF INDIANA, *County of Monroe,* } ss:

The foregoing instrument was filed for record in the recorder's office of Monroe county, on the 12th day of May A. D. —, at 11 o'clock in the forenoon of that day, and duly recorded in Book O of Mortgages, on page 5 and following.

[L. S.]

DILLON TALBOTT,
Recorder of Monroe County.

149 STATE OF INDIANA, *County of Owen,* } ss:

The foregoing instrument was filed for record in the recorder's office of Owen county, on the 14th day of May, A. D. 1890, at 10 o'clock in the forenoon of that day, and duly recorded in Book N of Mortgages, on page 358 and following.

[L. S.]

R. McCLAREN,
Recorder of Owen County.

STATE OF INDIANA, *County of Putnam,* } ss:

The foregoing instrument was filed for record in the recorder's office of Putnam county, on the 15th day of May A. D., 1890, at 9 o'clock in the forenoon of that day, and duly recorded in Book 14 of Mortgages, on page 1 and following.

[L. S.]

DANIEL S. HUNT,
Recorder of Putnam County.

STATE OF INDIANA, *County of Montgomery,* } ss:

The foregoing instrument was filed for record in the recorder's office of Montgomery county, on the 15th day of May A. D. 1890, at 2 o'clock in the p. m. of that day, and duly recorded in Book 33 of Mortgages, on page 118 and following.

[L. S.]

THOS. T. MUNHALL,
Recorder of Montgomery County.

150 STATE OF INDIANA, *County of Tippecanoe,* } ss:

The foregoing instrument wad filed for record in the recorder's office of Tippecanoe county, on the 16th day of May, A. D. 1890, at 9 o'clock, in the a. m. of that day, and duly recorded in Book 50 of Mortgages, on page — and following.

[L. S.]

J. W. McCREA,
Recorder of Tippecanoe County.

STATE OF INDIANA, } ss:
County of White, }

The foregoing instrument was filed for record in the recorder's office of White county, on the 17th day of May A. D. 1890, at 9 o'clock in the a. m. of that day, and duly recorded in Book 30 of Mortgages, on page 388 and following.

[L. S.] JAMES P. SIMONS,
Recorder of White County.

STATE OF INDIANA, } ss:
County of Pulaski, }

The foregoing instrument was filed for record in the recorder's office of Pulaski county, on the 21st day of May, A. D. 1890, at 2 o'clock in the afternoon of that day, and duly recorded in Book W of Mortgages, on page 41 and following.

[L. S.] L. E. McKINSEY,
Recorder of Pulaski County.

151 STATE OF INDIANA, } ss:
County of Stark, }

The foregoing instrument was filed for record in the recorder's office of Stark county on the 22nd day of May A. D. 1890 at 10:45 o'clock in the forenoon of that day, and duly recorded in Book L of Mortgages, on page 45 and following.

[L. S.] JACOB BOZARTH,
Recorder of Stark County.

STATE OF INDIANA, } ss:
County of Laporte, }

The foregoing instrument was filed for record in the recorder's office of Laporte county, on the 22nd day of May A. D. 1890, at 8 o'clock in the forenoon of that day, and duly recorded in Book 27 of Mortgages, on page — and following.

[L. S.] D. J. McMURRAY,
Recorder of Laporte County.

STATE OF INDIANA, } ss:
County of Marion, }

The foregoing instrument was filed for record in the recorder's office of Marion county, on the 19th day of May, A. D. 1890 at 4¼ o'clock in the p. m. of that day, and duly recorded in Book 194 of Mortgages, on page — and following.

[L. S.] CHRISTIAN BRINK,
Recorder of Marion County.

152 STATE OF INDIANA, } ss:
County of Hamilton, }

The foregoing instrument was filed for record in the recorder's office of Hamilton county on the 21st day of May A. D. 1890, at 9 o'clock in the a. m. of that day, and duly recorded in Book 9 of Mortgages, on page 1 and following.

[L. S.]

G. N. HOLLIS,
Recorder of Hamilton County.

STATE OF INDIANA, } ss:
County of Boone, }

The foregoing instrument was filed for record in the recorder's office of Boone county, on the 21st day of May A. D. 1890, at 7 o'clock in the a. m. of that day, and duly recorded in Book 30 of Mortgages, on page 1 and following.

[L. S.]

FRANCIS M. MOODY,
Recorder of Boone County.

STATE OF INDIANA, } ss:
County of Clinton, }

The foregoing instrument was filed for record in the recorder's office of Clinton county, on the 19th day of May, A. D. 1890, at 11 o'clock in the forenoon of that day, and duly recorded in Book 36 of Mortgages, on page 442 and following.

[L. S.]

W. M. WOOD,
Recorder of Clinton County.

153 STATE OF INDIANA, } ss:
County of Carroll, }

The foregoing instrument was filed for record in the recorder's office of Carroll county on the 19th day of May A. D. 1890, at 8 o'clock in the forenoon of that day, and duly recorded in Book Nine of Mortgages page one and following.

[L. S.]

CHAS. WILLIAMS,
Recorder of Carroll County.

STATE OF INDIANA, } ss:
County of Jasper, }

The foregoing instrument was filed for record in the recorder's office of Jasper county, on the 16th day of May A. D. 1890, at 4 o'clock in the afternoon of that day, and duly recorded in Book 19 of Mortgages, on page 295 and following.

[L. S.]

JAMES F. ANTRIM,
Recorder of Jasper County.

STATE OF INDIANA, } ss:
County of Newton, }

The foregoing instrument was filed for record in the recorder's office of Newton county, on the 20th day of May, A. D. 1890, at 11 o'clock in the forenoon of that day, and duly recorded in Book 22 of Mortgages, on page 215 and following.

[L. S.] JOHN HIGGINS,
Recorder of Newton County.

154 STATE OF INDIANA, } ss:
County of Lake, }

The foregoing instrument was filed for record in the recorder's office of Lake county, on the 23rd day of May, 1890 and 11 o'clock in the forenoon of that day, and duly recorded in Book 22 of Mortgages, on page 1 and following.

[L. S.] ED. P. AMES,
Recorder of Lake County.

STATE OF KENUTCKY, }
County of Jefferson. }

The foregoing instrument was filed for record in the clerk's office of Jefferson county court on the twenty-sixth day of May, 1890, at 10 o'clock in the forenoon of that day, and duly recorded in Book 352 of Mortgages, on page 2 and following.

[L. S.] GEO. H. WEBB,
Clerk of Jefferson County Court.

STATE OF ILLINOIS, } ss:
County of Cook, }

1,275,008.

The foregoing instrument was filed for record in the recorder's office of Cook county, Illinois, on the 24th day of May, 1890, at 9 o'clock in the forenoon of that day, and duly recorded in Book 2871 of Records, on page 444 and following.

[L. S.] JOHN STEPHENS,
Recorder of Cook County.

155 STATE OF INDIANA, } ss:
County of Greene, }

The foregoing instrument was filed for record in the recorder's office of Greene county, Indiana, on the 13th day of May, 1890, at 1 o'clock in the p. m. of that day, and duly recorded in Book T of Mortgages on page 438 and following.

[L. S.] JOSEPH G. SMITH,
Recorder of Greene County.

156 *Mortgage L., N. A. & C. to Cent. Trust Co.*

Plaintiff offered in evidence the record of a mortgage made by the Louisville, New Albany and Chicago Railway Company to the Central Trust Company of New York, dated September first, 1894, appearing on Mortgage Record No. 41, page 75, *et seq.*, of record of mortgages in White county, (it being admitted by the parties that this Mortgage Record 41, — on file in the recorder's office of White county, Indiana, and in the custody of the recorder).

Defendants objected to the introduction of this mortgage, on the ground that there is nothing described in the mortgage except the property then occupied and used by the railway company for railroad purposes and such other property as it might thereafter acquire for railroad purposes, and does not describe this property, and the further objection, that the owner of these lands was no party of this mortgage; defendants objected further, because a mortgage recorded in White county would not establish a lien on lands in Pulaski county.

By the COURT: What is the purpose of this evidence?

By Judge FIELD: The purpose is to show that this railroad company gave to the Central Trust Company of New York, a mortgage upon all its property along the entire line of its road in this State; I want to show too that the mortgages were all foreclosed, and this is for the purpose of showing an executed mortgage.

The court overruled the objection, to which ruling of the court, the defendants at the time, excepted; and the said mortgage being then read and given in evidence was in the words and figures following, to-wit:

157 This indenture made and entered into this first day of September one thousand eight hundred and ninety four by and between the Louisville New Albany and Chicago Railway Company a corporation duly created and existing under the laws of the State of Indiana party of the first part and the Central Trust Company of New York a corporation duly created and existing under the laws of the State of New York hereinafter called the trust company and James Murdock of Lafayette in the State of Indiana parties of the second part.

Whereas the party of the first, part owns and is operating a system of rail roads in the State of Indiana about five hundred and twelve miles in length, which is composed of a line from New Albany on the Ohio river to Michigan City on Lake Michigan hereinafter called the main line, a line from Indianapolis to a junction with the Chicago and Western Indiana railroad at a point on the State line between Indiana and Illinois, about twenty miles south east of Chicago hereinafter called the Air line together with certain proprietary and leas-hold interests in the franchises and railroads of the said

Chicago and Western Indiana Railroad Company and the Belt Railway Company of Chicago and in the terminal facilities of the said companies in and near the city of Chicago Illinois, and all its real estate, buildings, tracks trackage and terminal rights, facilities and franchises in the other cities above mentioned, and in the city of Louisville in the State of Kentucky and between said city of Louisville and the city of New Albany, and in the city of Indianapolis, Indiana and is also the exclusive owner of the French Lick Springs rail roads.

And whereas there are now existing certain liens upon said system of railroads, including a certain mortgage made July. 1st. 1880 by the party of the first part to John C. New of
158 Indianapolis and Washington C. De Pauw of New Albany in the State of Indiana as trustees, and a certain mortgage made August 10th, 1881 by the party of the first part to John C. New of Indianapolis as trustee and a certain mortgage made January 1st, 1886 by the party of the first part, to the Farmers Loan and Trust Company of the City of New York and John H. Barker of Michigan City as trustees and a certain mortgage made May 1st. 1890 by the party of the first part to the Central Trust Company of New York and John Stotsenburg of New Albany as trustees.

And whereas the railway company has in its possession and use certain railroad equipment and rolling stock of the original cost of one million two thousand two and thirty four dollars such equipment consisting of the following five certain parcels that is to say,

1. Three hundred box cars built by the Haskell & Barker Car Company costing one hundred and forty thousand and ten dollars.

2. Two hundred and fifty flat cars built by the Haskell and Barker Car Company costing ninety six thousand two hundred and fifty dollars.

3. Two hundred coal cars and fifty stock cars built by the Haskell & Barker Car Company costing one hundred and two thousand seven hundred and fifty dollars.

4. Three hundred box cars and two hundred and fifty flat cars built by Oliver Adams, agent, costing two hundred and ninety three thousand two hundred and twenty four dollars.

5. One thousand flat cars built by the Haskell & Barker Car Company costing three hundred and seventy thousand *thousand* dollars.

And the title to the equipment above mentioned is at present in the builders thereof, and the railway company desires to
159 acquire the title to the same, said equipment being necessary in the operation of its said rail road.

And whereas, the railway company in the exercise of the powers in that behalf possessed by it under the laws of the State of Indiana, and in order to provide means to purchase said equipment and to obtain the title thereto and in accordance with resolutions duly adopted by its board of directors and by its stockholders at meetings of said board of directors and of said stockholders, duly and regularly called and held has determined to issue its bonds to be known

as equipment five per cent. sinking fund mortgage gold bonds aggregating an amount not exceeding one million dollars in gold coin of the United States of America, said bonds to be for one thousand dollars each, payable twenty years from December 1–1894 unless sooner paid out of the sinking fund to be provided for payment of the same, or unless the railway company shall elect to pay the same before that time, and to bear interest from the first day of December, 1894, payable semi-annually at and after the rate of five per cent. per annum in like gold coin on the first days of June and December in each and every year;

And whereas the said bonds and the interest warrants to be annexed thereto, and the trustees' certificate to be endorsed thereon are to be in the form or substantially the form following, that is to say;

UNITED STATES OF AMERICA,

No. —. *State of Indiana.* $1,000.

Louisville, New Albany and Chicago Railway Company Equipment Five Per Cent. Sinking Fund Mortgage Gold Bond.

Issue limited to $1,000,000.

The Louisville, New Albany and Chicago Railway Company, a corporation of the State of Indiana, for value received hereby
160 promise to pay to the Central Trust Company of New York or to the bearer hereof the sum of one thousand dollars in gold coin of the United States of the present standard of weights and fineness, at the office or agency of said railway company in the city of New York on the first day of December, in the year of one thousand nine hundred and fourteen (unless this bond be sooner redeemed as provided in the mortgage hereinafter mentioned) and to pay interest thereupon in the meantime from the first day of December, one thousand eight hundred and ninety four, at the rate of five per cent. per annum, payable semi-annually in like gold coin on the first days of June and December in each year at said office or agency upon presentation of the coupons hereto annexed as they severally become due.

The principal and the interest of this bond is payable without relief from valuation or appraisement laws; this bond is one of a series of bonds of like tenor and effect numbered consecutively from one upwards and secured by indenture of mortgage or deed of trust to the Central Trust Company of New York and James Murdock of Indiana, as trustees dated September 1st, 1894, covering the equipment proposed to be acquired by means of the proceeds of said bonds as provided in said mortgage or deed of trust, and also all the other property of said railway company as specified and described in said mortgage or deed of trust.

This bond may at any time upon production thereof to said railway company and proper endorsement being made thereon, be

registered as to the principal thereof upon the books of the railway company in the name of the holder thereof and thereupon its transferability by delivery shall cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer
161 duly made upon said books unless the last transfer shall have been made to bearer, and this bond shall be subject to successive registration and transfers to bearer at the option of the holder but such registration shall not restrain or effect the transferability of the coupons by delivery.

After six months' default in the payment of any semi-annual installment of interest thereon, the principal of all the bonds secured by said indenture of mortgage or deed of trust may be made immediately due and payable as prescribed therein. This bond is entitled to the benefit of the provisions of the sinking fund in said mortgage or deed of trust and may be paid prior to the maturity thereof at one hundred and five per cent. of the par value thereof and accrued interest thereon, as provided in said mortgage or deed of trust. This bond shall not be valid until the certificate endorsed hereon shall have been signed by the Central Trust Company of New York one of said trustees or its successors or successors in the trust, and it is issued and held under and subject to the terms and conditions of said mortgage or deed of trust.

In witness whereof the said Louisville, New Albany and Chicago Railway Company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and attested by its secretary, and has caused each of the said coupons to be attested by the engraved signature of its treasurer this first day of September, one thousand eight hundred and ninety four.

LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY,

[SEAL.] By —— ——, *President.*

Attest: —— ——, *Secretary.*

162 (*Form of Coupon.*)

The Louisville, New Albany and Chicago Railway Company on —— will pay to bearer twenty-five dollars in gold at its office or agency in the city of New York, being six months' interest on its equipment five per cent. gold bond No. —.

—— ——, *Treasurer.*

(*Form of Trustee's Certificate.*)

Central Trust Company of New York hereby certifies that this — one of the bonds issued under the mortgage or deed of trust of the Louisville, New Albany and Chicago Railway Company bearing date September 1, 1894 and referred to herein.

CENTRAL TRUST COMPANY OF NEW YORK, *Trustee,*

By —— ——, *Vice-President.*

And whereas, such bonds are not to be entitled to share in the benefit or security of this mortgage or deed of trust unless they shall have endorsed thereon such certificate of the Central Trust Company of New York, or its successor or successors in this trust;

And whereas, the said coupons are to be issued with the engraved signature of the treasurer of the railway company it being however agreed by it that when thus issued such engraved signature shall be as binding as if the signature of such treasurer were affixed to such coupons in his own proper handwriting.

And whereas, by and in accordance with the resolutions of the board of directors and of the stockholders of the railway company adopted at meetings duly and regularly called and held, it has been determined to secure the payment of all the said bonds equally, principal and interest by this mortgage or deed of trust in the manner and to the effect hereinafter expressed;

Now, therefore this indenture witnesseth, that in considera-
163 tion of the premises and of the sum of one dollar to it paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and to secure the payment of the principal and interest of all bonds issued hereunder according to the tenor and effect thereof without preference or priority, and equally and ratably the party of the first part hath granted, bargained, sold, aliened, remised, released conveyed and confirmed and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the parties of the second part and to the survivor of them and their successors and assigns forever, all the railway systems and property of the said party of the first part of every kind and nature and however owned, held leased or enjoyed, together with all the equipment, appurtenances and franchises hereunto appertaining, being more particularly described as follows: All the present line of railway extending from New Albany Indiana to Michigan City in the same State and also from Indianapolis, Indiana to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of Chicago Illinois, and also its proprietary and owned line of railroad called the Bedford and Bloomfield railroad extending from Bedford to Switz City in Indiana; and also its other proprietary and owned line of railroad called the Orleans, West Baden and French Lick, Indiana; and also all its lands, station buildings, tracks and terminal facilities in the city of Louisville Kentucky; and also all its rights, interest proprietary and leasehold estate and terminal facilities in the franchise, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company and in the Belt Railway Company of Chicago, in the city of Chicago, or elsewhere in the State of Illinois. And also all its real estate, trackage, leasehold
164 and contract rights and terminal properties, stations, sidings and franchises in the city of Indianapolis, Indiana; and also all its leasehold and contract rights trackage and terminal facilities vested in the party of the first part by virtue of

its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the city of New Albany, Indiana and the city of Louisville Kentucky, the before mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and operated by it being about five hundred and twelve miles in length and situate in the counties of Floyd, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, Laporte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake in the State of Indiana, and Cook county in the State of Illinois, and Jefferson county in the State of Kentucky, including and conveying by these presents all the property of every sort or nature real personal and mixed now owned by said railway company for the purpose of and connected with or appertaining to the railroads or railways above mentioned and described together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turn-tables, fences, walls, fixtures, franchises, privileges and rights of the railway company and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured, and unmanufactured materials, coal wood and supplies of every kind belonging or appertaining to the railway company; also all the tolls, incomes, issues and profits arising out of the said property and its operation, and all rights to receive and recover the same also all estate, right
165 title and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands with the buildings thereon erected, it being the true intent and meaning of these presents that the said railway company party of the first part, shall and doth convey to the said trustee all and all manner of franchise of every kind and description all and all manner of real estate or interest therein, wherever such real estate may be situate and however derived and wherever situate, all and all manner of personal property, of whatever nature or description, the same may be, at the date of these — owned or possessed by the said railway company whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises or property of every kind and description, real, personal or mixed and wherever the same may be situate, that may at any time before or after the date of this indenture, be acquired by or for the said railway company for purposes connected with or appertaining to said railroads or railways hereby conveyed, all of which it is hereby covenanted shall enure by way of accretion, to the benefit and advantage of said trustees and by way of further and better security for the bonds to be issued hereunder; it being

intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contract rights and franchises which the said railway company now own, as fully and to the same extent as if all such property were specifically described herein and
166 conveyed hereby.

To have and to hold all and singular the above mentioned and described railways premises and property, rights franchises and appurtenances unto the said parties of the second part their and each of their successor or successors and assigns forever; in trust nevertheless for the equal *pro rata* benefit and security of all the holders of all the said bonds secured hereby without any preference or priority by reason of priority in time of issue or negotiation thereof or otherwise and for the uses and purposes and upon the trusts, conditions, covenants and agreements hereinafter declared and expressed.

And in further consideration of the premises and of the mutual covenants and agreements hereinafter set forth and of one dollar paid by each party to each of the others, it is hereby expressly agreed by and between the partied hereto that the equipment and rolling stock at any time held or acquired by the parties of the second part or either of them their and each of their successor or successors as provided in this indenture are and shall be charged with the agreements, and are and shall be held by the trustees upon the trusts and for the uses and purposes following;

Article first. The railway company, in consideration of the undertakings and agreements of the trustees herein set forth hereby agrees forthwith to execute and issue in the form hereinbefore recited and to deliver to the trust company to be certified, issued and used for the purposes hereinafter described, bonds of the railway company intended to be secured hereby to an amount not exceeding one million dollars and the trust company shall thereupon endorse upon each of said bonds upon the order of the railway company or its president or secretary only at the time and in the manner
167 following, that is to say,

If and whenever the equipment and rolling stock included in any of the parcels hereinbefore described, shall be transferred to, and the title thereto vested in the trust company by proper instrument in writing, the trust company shall certify and deliver as aforesaid bonds of the issue hereby secured, the principal of which bonds shall be equal in amount to the cost of such parcel of equipment and rolling stock as hereinafter stated.

If the bonds remaining in the hands of the trust company at the time when the title to all of said equipment and rolling stock included in all of said parcels hereinbefore described shall have been so transferred to it, said trust company shall as soon as the title to all of said equipment and rolling stock shall have been so transferred to it certify as aforesaid all bonds of the issue above men-

tioned and intended to be hereby secured which shall still remain in its hands unissued.

Article second. The trust company agrees with the respective persons firms and corporations who shall at any time become the holders of the bonds or coupons issued hereunder, and with the railway company that it will hold all the rolling stock and equipment acquired by it with the bonds issued hereunder and intended to be hereby secured, as hereinbefore provided in trust under the provisions of this indenture for the equal benefit and security of all the persons, firms and corporations who shall at any time become holders of said bonds or coupons without priority, preference or distinction as to lien, or otherwise by reason of priority in time of the issue or negotiation of any said bonds so that all of said bonds shall have
the same right, lien and privilege under and by virtue of this
168 indenture with like effect as if they had all been executed, delivered and negotiated simultaneously on the date hereof.

Article third. The railway company agrees to pay the principal and interest of all bonds duly issued hereunder according to the terms thereof when such principal and interest shall become or be due according to the terms of said bonds and of the coupons for interest thereto appertaining without deduction from principal or interest for any taxes, assessments or governmental or other charges imposed on this deed of trust or mortgage, or on any bonds issued hereunder or on any property or franchise at any time covered hereby, the railway company hereby agreeing to pay the same, as the coupons appertaining to said bonds are paid they shall be cancelled and no purchase of any coupons nor any advance or loan thereon or redemption thereof by or on behalf of the railway company after the same have been detached from the bonds to which they belong shall keep such coupons alive or preserve their lien upon any of said property.

Article fourth. The railway company hereby covenants and agrees that until the payment of all the bonds secured hereby it will on or before the first day of September in each year, commencing with the first day of September one thousand eight hundred and ninety-eight pay to the trust company the sum of thirty thousand dollars which sum shall be applied by said trust company as a sinking fund and to the purchase of bonds secured hereby at the market rates, not exceeding one hundred and five per cent. of the par value thereof and accrued interest thereon. In the event that such bonds cannot be purchased at or below the said rate then the bonds secured hereby shall be subject to be drawn for
payment and paid as follows: If the trust company shall
169 not have been able to purchase said bonds at or below the said rate within thirty days after any such yearly payment shall have been made to it, said trust company shall draw by lot bonds secured by this mortgage to be paid for out of the moneys so paid to it at the rate of one hundred and five per cent. of the par value thereof and accrued interest thereon and the bonds so drawn shall

cease to bear interest from and after the day specified for that purpose in the public notice of such drawing, which public notice shall be given by publication thereof twice a week for eight successive weeks in a daily newspaper published in the city of New York, but the day so specified shall not be less than sixty days after such drawing. All of such bonds so purchased or drawn and the coupons appertaining thereto shall be held by said trust company uncancelled and shall continue to be secured hereby and said bonds shall continue to bear interest in like manner as the other bonds still outstanding and the coupons appertaining to such bonds so held by said trust company shall be paid by the railway company when and as the same shall mature, the railway company hereby agreeing to pay the same and any and all sums of money so received by said trust company for interest upon said bonds so held by it for the sinking fund shall be applied by it to the purchase or redemption of bonds at the time when and in the manner that the said yearly payments to be made by the railway company for the sinking fund are to be so applied. All bonds so held by the trust company for the sinking fund shall be stamped with the word- following: Held for the sinking fund of the Louisville, New Albany and Chicago Railway Company equipment five per cent. mortgage.

The railway company, if it shall elecrt so to do may, on any day on which interest is payable upon said bonds issued here-
170 under and secured hereby upon giving notice of its intentions so to do by publication thereof twice a week for ninety days in two daily newspapers published in the city of New York, pay all or any part of the said bonds issued here under and secured hereby at one hundred and five per cent. of the par value thereof and accrued interest thereon, and said bonds so to be paid shall cease to bear interest from and after the date mentioned in such notice as the date on which payment will be made.

In the event that the railway company shall not elect to pay all of said bonds outstanding at the time of such election the bonds to be paid shall be drawn by lot by the railway company and the numbers of the bonds so drawn to be paid shall be given in the published notice above provided.

Article fifth. Until default shall be made by the railway company its successors or assigns in the payment of the principal or interest of the said bonds or some of them or some part thereof or in the payment of the sinking fund hereinbefore provided to be paid for the purchase or redemption of said bonds, or some part of such sinking fund the railway company, its successors and assigns, shall be suffered and permitted to possess and enjoy the mortgaged premises hereby conveyed and transferred by it, with the appurtenances and all and singular the rights and franchises herein before described and hereby conveyed and transferred and to receive, take and use the tolls, revenues, incomes, earnings and profits thereof.

Article sixth. The trustees agree with the railway company that so long as there is no default by the railway company in the pay-

ment of the principal or interest of said bonds, or any of them, or any part thereof or in the payment of the sinking fund here-
171 inbefore provided to be paid for the purchase or redemption of said bonds or any part of such sinking fund and so long as there is no proceeding of any kind *or* against the railway company for the appointment of a receiver or for the foreclosure of any deed or trust or mortgage the railway company shall have and is hereby given the possession and use of the equipment and rolling stock of any — at any time acquired by the trust company under the provision hereof out of the proceeds of the bonds issued hereunder and secured hereby with the right to receive the earnings thereof.

Article seventh. The railway company agrees with the trustees and with the person- firms and corporations who shall at any time become holders of bonds or coupons issued under this indenture that it will hold and use said equipment and rolling stock in accordance with the provisions of this indenture, and will not transfer possession of any thereof to any other persons or corporations except temporarily in the usual course of traffic without the written consent of the trust company, and that in case possession of any of the equipment or rolling stock furnished for its use by the trust company as provided herein, shall in the course of traffic be transferred from the railway company to any other person or corporation, such other person or corporation so long as any of said equipment or rolling stock shall be in their possession, shall hold the same as bailee of the trust company and not of the railway company and shall be answerable to the trust company for the same and that the railway company in any arrangement it shall make with such other person or corporation in respect thereto, shall act only as the agent of the trust company and not on its own behalf.

The railway company further agrees that it will at its own
172 expense keep all the equipment and rolling stock at any time furnished for its use by the trust company as herein provided in good order and repair and will at once replace at its own cost any of the same which shall be destroyed from any cause, whatever during the continuance of its trust with other like equipment or rolling stock of equal value or with such other rolling stock or equipment of different character but of equal value as may be approved in writing by the trust company and that the railway company will promptly file with the trust company a statement in detail of the former equipment and rolling stock and of the equipment and rolling stock so provided in replacement thereof and that the railway company will make all repairs and replacements to the satisfaction of any competent inspector at any time selected by the trustees to examine the same and will cause all the rolling stock and equipment provided in replacement of any previously *covered* hereby to be transferred to the trust company by proper bills of sale or other instruments of transfer and free of lien, and will cause to be marked on each side of every article of rolling stock and equipment held or required by the authority of the trustees under the terms

and provision- and for the purpose of this indenture the words "Owned by Central Trust Company of New York, trustee Louisville New Albany and Chicago Railway Company equipment mortgage, and the proper number and will not allow the name or designation of any other company as owner to be placed on any such railroad equipment or rolling stock and will immediately restore any such marks of ownership at any time destroyed and will do such other acts as the trust company shall require for the full protection of the property and rights of the trustees and the holders of the bonds issued hereunder.

173 The railway company further agrees that it will through its general manager or other proper officer or agent furnish to the trust company yearly in the month of August during the continuance of this trust, or oftener if required by the trust company a statement of all the equipment and rolling stock then in use by the railway company hereunder with a special statement of the number and description of all such as shall have been destroyed and substituted during the year next preceeding, and that the trust company shall have the right to inspect the said equipment and rolling stock as often as it shall desire during the continuance of this trust by any person appointed by the trust company and that the railway company will provide the necessary means or necessary authority to enable such persons to travel without charge over the railroads on which a/y of such equipment or rolling stock may be for the purpose of making such inspection.

The railway company furtner agrees that it will insure all the equipment and rolling stock at any time furnished for its use by the trust company as herein provided, (including all replacements thereof) as the property and for the benefit of the trust company for such amounts as other similar railroad equipment and rolling stock are insured by the railway company and will keep the said equipment and rolling stock so insured until the bonds hereby secured are fully paid and will deposit the policies of insurance or certificates thereof with the trust company.

Article eighth. If default shall be made in the payment of any semi-annual installment of interest mentioned in the said bonds, or any part thereof according to the tenor and effect of said bonds and the coupons for the interest thereunto appertaining, and if

174 such default shall continue for a period of six months, then the parties of the second part or their successors or successor in the trust, may at their option, and upon being requested in writing by the holders of a majority in amount of the said bonds then outstanding shall declare the principal of all of said bonds to be immediately due and payable thereupon the principal of all of said bonds shall become due and payable forthwith anything in said bonds contained to the contrary notwithstanding, such declaration may be made by notice in writing to the party of the first part or by publication thereof once in some daily newspaper published in the city of New York.

Article ninth. If default shall be made in the payment of the principal or interest moneys mentioned in the said bonds or the coupons thereunto appertaining or any or either of them, or any part thereof, according to the tenor and effect of said bonds and coupons or either of them and such default if in payment of interest shall have continued for six months or if default shall be made in the payment of the sinking fund hereinbefore provided to be paid for the purchase or redemption of said bonds or some part of such sinking fund, and such default — payment of any sum required to be paid for said sinking fund shall have continued for six months or if proceedings of any kind shall be commenced by or against the railway company for the appointment of a receiver or for the foreclosure of any deed of trust or mortgage of the railway company then and in their discretion and upon being requested in writing by the holders of a majority in amount of the said bonds then outstanding, and upon being properly indemnified against cost and expenses which may be incurred by acting in pursuance of such request shall forthwith do any or all of the things following namely:—

175 1. Enter into and upon and take and hold possession of all and singular the premises, estates, franchises, rights, privileges and property hereby granted and conveyed to the parties of the second part or intended so to be and in person, or by one or more agents, operate the said railway, making from time to time all such repairs or replacements as they may deem judicious and all such useful alterations, additions and improvements as the income coming into their hands be adequate to pay for and take, collect and receive all fares, freights, tolls, earnings, issues, profits and income of said railways and property and apply such fares, freights, tolls, earnings, issues, profits and income to the proper expenses of holding, operating and managing the said railways and other premises and conducting the business thereof and payment of and for any and all taxes, assessments, charges, rental, or such liens superior to the lien of these presents upon said premises as they may deem proper, and all necessary and proper repairs replacements, alterations, additions, and improvements upon said property, and all expenses, costs, charges and counsel fees in the premises of the said parties of the second part or their successors in the trust and a reasonable compensation for their services and next to the payment of the interest and principal of the said bonds according to the tenor and effect thereof as the same may be or become due and payable; and in case the principal moneys secured by said bonds shall not have become due, the moneys applicable to the payment of interest shall be applied upon the interest warrants remaining in default in the order of their maturity; and in case the said principal moneys shall have become due the moneys applicable to the payment of the principal and interest *pro-rata* without any preference or

176 priority whatsoever.

2. After entry or without entry cause the whole value of the said premises, estates, franchises, rights, privileges, and property

hereby granted and conveyed to the parties of the second part or intended so to be with their appurtenances and all benefits and equity of redemptions of the said party of the first part and its successors and assigns therein or thereto to be sold at public auction in the city of Indianapolis in the State of Indiana or in the city of New York, in the State of New York, giving at least three months' previous notice of the time and place of such sale by publication publishing the same at least once in each week during such period of three months in two daily newspapers published in said city of New York and in two newspapers published in said city of Indianapolis and giving such other notice of such sale as may be required by law, if any other notice be so required. It shall be lawful for the said parties of the second part and their successors making such sale and they are hereby authorized and empowered as the attorney or attorneys of the party of the first part and its successors by these presents duly constituted and appointed for that purpose to make execute and deliver to the purchaser or purchasers on such sale all such deed and conveyance as shall be necessary or proper to convey to and vest in him or them the said premises, estates, franchises, rights, privileges and property, and every part and parcel thereof, and all of the estate, right, title and interest of the said party of the first part and its successors and assigns therein or thereto and such sale and the deeds and conveyances so to be thereupon executed shall be valid and effectual forever and shall be a perpetual bar in law and equity against
177 the said party of the first part and its successors and assigns, and against all persons claiming or to claim by from or under it or them or any of them. The receipt of the trustees or trustee who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money and such purchasers, or purchasers, his or their heirs or assigns or personal representatives shall not, after paying such purchase money and receiving such receipts of such trustees therefor be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase money by the trustees or trustee.

3. Proceed by bill in equity or other proper proceeding in any court or courts of competent jurisdiction to foreclose this mortgage or enforce the rights, liens and securities of the trustees or trustee and the bondholders thereunder, and thereupon said trustees or trustee shall be entitled to have the said premises estates, franchises, rights, privileges and property hereby granted or conveyed to them or intended so to be sold by judicial sale under the order or decree of such court or courts for or towards the satisfaction of the principal and interest due or owing upon the then outstanding bonds issued under or entitled to the benefit of the security of this mortgage, and for the enforcement of the rights, liens and securities of the trustees or trustee and the bond-holders.

4. Demand of the railway company and of any other person or corporation then having the same the immediate possession of any or all of the existing equipment and rolling stock which shall have been furnished for the use of the railway company under the provisions of this deed of trust, including all replacement
178 thereof, and with such force as may be necessary enter upon the railroad and other premises of the railway company and of any other person or corporation on whose premises the same may be and take immediate and maintain exclusive possession of any or all of said equipment and rolling stock, and upon such retaking thereof, hold and use or operate the same or lease the same, or otherwise contract for the use thereof, making from time to time all proper repairs thereof and paying insurance, taxes and other necessary expenses connected therewith, and receive the earnings, rentals and profits thereof.

5. After such retaking proceed with or without the order or decree of any court of equity or other competent court having jurisdiction in the premises, to sell any or all of said equipment or rolling stock at public sale in such lots or amounts, on such notice and at sich times and at such places as the trustees or trustee or the court may determine and adjourn any sale from time to time and upon any such sale to transfer and deliver any property sold to the purchaser thereof by good and sufficient instruments of transfer, but without liability to see the application of the purchase money and without obligation to enquire into the necessity expediency or authority of any such sale which sale shall be a perpetual bar, both in law and equity against the trustees and each of them and their successors and assigns or the successors and assigns of either of them and against the railway company and against all persons claiming under them or either of them.

Article tenth. It is hereby expressly declared and agreed that the parties of the second part, or their successors in the said trust, shall, out of the proceeds of any sale made under the provisions of
179 this indenture, whether by judicial proceedings or otherwise in enforcement of the security afforded by these presents in the first place pay and retain all costs and expenses attending such sale and all counsel fees and other expenses incurred by them or either of them, in reference to the same, and receive and retain a reasonable compensation for their own services in the premises and also any balance which may be due to them or either of them on account of any disbursements or expenses paid or incurred in or about the care and management of the said premises subsequent to the taking possession thereof by them, or either of them, including the reasonable compensation of any agent or agents who may be employed in or about such care and management, and the rest of the proceeds of such sale or so much thereof as may be necessary, shall be applied to the payment of the whole amount of principal and interest which shall then be due and unpaid upon the bonds secured hereby, or any of them, whether the said principal by

the tenor of the said bonds, be then due or yet to become due; and in case of a deficiency in such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them respectively, and without discrimination as between principal and interest and without preference of the holder of any one bond or coupon over any of the others; and any surplus which may remain after the full payment of the principal and interest of all the said bonds shall be paid over to the said party of the first part, or its successors or assigns, upon lawful demand being made therefor.

Article eleventh. It is expressly agreed by the railway company that in case of a retaking by the trustees or trustee of any of
180 the equipment or rolling stock at any time furnished for the use of the railway company hereunder or substituted for any so furnished, or in case the trustees or trustee shall demand the possession of the same under any of the agreements herein contained, then the railway company will without cost or charge to the trustees or trustee or to those beneficially interested in the trust hereby created, cause every railroad company having the possession or use of any of said property from the railway company to draw forthwith in the usual manner and at the usual speed of freight trains the said equipment and rolling stock to such point or points on the railroad where the same may be as shall be reasonably designated by the trustees or trustee and that the railway company will draw said equipment and rolling stock from any points of connection with other railroads or points on its own railroads where the same may be to such point or points on any of its own railroads as shall be reasonably designated by the trustees or trustee and that the trustees or trustee shall have the right without expense to them or it, to keep and store said equipment and rolling stock upon any of the railroads or premises of the railway company until sold, as provided herein, and until a reasonable time for removal thereof, or until removed by the trustees or trustee without sale.

Article twelfth. The railway company further agrees that in case of any default on its part hereunder all the earnings of the said equipment and rolling stock at any time furnished for the use of the railway company by the trustees or trustee as herein provided or substituted for any so furnished shall then and thereafter be payable to the trustees or trustee and be applied by them or it as if received for the use thereof after a retaking under the provisions hereof and the railway company agrees forthwith upon the
181 said default to give notice to the Railroad Clearinghouse Association and any railroad companies which at the time shall hold or owe any moneys for the service or use of the said equipment or rolling stock to pay over all such moneys to the trustees or trustee and hereby authorizes the trustees or trustee to receive the same and to give such notice with like effect as if given by the railway company; it is agreed however that such notice shall not be necessary

to enable the trustees or trustee to collect and receive such earning in case of any such default.

Article fourteenth. The railway company agrees that in case of any default upon its part hereunder, it will not set up claim or seek to take advantage of any present or future valuation, stay, appraisment, redemption or extension law or laws which might prevent, hinder or delay the exercise by the trustees or trustee of the right to retake possession of any of the equipment or rolling stock mentioned or described herein, or covered hereby or to operate, use, lease or otherwise contract with regard to the use of the same, or to sell any of the property covered hereby or described herein, or which might prevent or delay the immediate enforcement or foreclosure of this indenture or the absolute sale and delivery of any of said property under any proceedings for the purpose, but hereby irrevocably waives the benefits of all such laws, and also hereby irrevocably waives all rights, to have any of the property covered hereby or described herein marshalled upon any foreclosure sale thereof, and consents that the same be sold either as a whole or in such lots or amounts as may be determined by the trustees or trustee or by any court of competent jurisdiction in which foreclosure proceedings with respect to such property may be pending.

182 Article fifteenth. It is agreed between the parties hereto that at any sale of the equipment and rolling stock hereinbefore mentioned or at any sale of the premises or property herein conveyed to the trustees or trustee whether made by the trustees or trustee or by judicial authority, the trustees or trustee may bid for and purchase any of the property so sold, or cause the same to be bid for and purchase-, and that in the event of the purchase of any of said property by the trustees or trustee the right and title thereto shall vest in said trustee or trustees and any bond holder or bondholders may bid for and purchase any of the property so sold at any sale thereof.

Article sixteenth. In case of any such sale as is herein authorized being made of the mortgaged premises and property, or of the equipment of the lien hereby created in the course of judicial proceedings or otherwise the purchaser or purchasers at such sale shall be entitled in making settlement for and payment of the purchase money bidden at such sale to turn in or use towards the payment of such purchase money the bonds and coupons held by such purchaser or purchasers to or towards the payment whereof of the net proceeds of such sale shall be legally applicable reckoning such bonds and coupons or the amounts so turned in or used of the same for such purpose, at such sum as would be payable out of the net-proceeds of such sale to such purchaser or purchasers as holder or holders of such bonds or coupons for his or their just share or proportion of such net proceeds of sale upon due apportionment of and concerning such net proceeds. If the net proceeds of such sale be sufficient to extinguish such bonds and coupons so turned in or used they shall

be cancelled by the person or persons making the sale; and
183 if such net proceeds shall suffice to make a partial payment only of such bonds and coupons due endorsement shall be made upon the same of the amount realized on account thereof, and said bonds and coupons so endorsed shall be returned to the holders.

Article seventeenth. It is expressly agreed by and between the parties hereto that all the costs, charges and legal or other expenses necessary or incident to the acquiring by, or conveying or transfer to the trust company of any equipment or rolling stock under the provisions hereof shall be paid by the railway company and that until all the payments provided for in this indenture and in the bonds issued hereunder shall have been fully made by the railway company and all the agreements on its part hereunder shall have been kept and performed the title to the equipment and rolling stock acquired by means of the bonds issued hereunder in accordance with the provisions hereof shall not pass to or vest in the railway company nor shall the railway company have any right in respect to said equipment and rolling stock except that of using the same as provided in this indenture.

Article eighteenth. While there shall be no existing default in the payment of the principal or interest of any of the said bonds secured hereby or in the performance of any of the matters and things hereby required to be done or performed by the railway company the railway company shall have the right to sell, lease and otherwise dispose of free from the lien of this mortgage or deed of trust any real or personal property conveyed to the trustees or trustee in this indenture which may no longer be required by the railway company for the purpose of its incorporation and the trustees or trustee shall have full power thereupon to release from the lien of this mortgage or deed of trust any property so sold, leased or otherwise disposed of.

184 Any property which may be required for use in substitution for any so released or conveyed to them or it by the railway company, its successors or assigns upon the trusts of these presents. The affidavit of the president or other proper officer of the railway company to the effect that the property so sold, leased, or disposed of is no longer required by the railway company for the purposes of its incorporation shall be sufficient evidence to the trustees or trustee of this fact, and the trustees or trustee shall not be liable to any persons or person by reason of any act done or performed under the provisions of this article in good faith.

Article nineteenth. Said party of the first part for itself its successors and assigns, doth hereby covenant grant and agree to and with the said parties of the second part and their successors in the trust and to and with the respective persons and corporations who or which shall at any time become holders of the said bonds hereby secured or any of them, that the said party of the first part its successors and assigns shall and will at any time and from time to time hereafter upon request, make do execute and deliver all such further

and other acts, deeds and things as shall be reasonably advised, devised or required to effectuate the intention of these presents and to assure and confirm to the said parties of the second part or their successors all and singular the property and estate real and personal, hereinbefore described and hereby intended to be granted and so as to render the same and especially such portions thereof as shall be hereafter acquired by the said party of the first part or its successors available for the security and satisfaction of the said bonds according to the intent and purpose herein expressed.

185 Article twentieth. If the party of the first part or its successors or assigns shall well and truly pay, or cause to be paid to the holders of the said bonds and coupons the principal and interest moneys secured hereby when and as the same shall become due and payable according to the terms provisions, conditions, tenor and effect of the said bonds and coupons then these presents and the estate hereby granted to the trustee or trustees shall cease, determine and be null and void, and the parties of the second part and their successors, agree that in that event all of the said equipment and rolling stock then owned and held by them under the provisions of this indenture shall forthwith become the property of the railway company and the parties of the second part or their successors shall thereupon execute and deliver such proper instrument or instauments as shall be necessary to convey said equipment and rolling stock to the railway company and release the same from all liens created by this deed of trust or mortgage.

Article twenty-first. It is expressly covenanted agreed and declared by and between the parties hereto that the parties of the second part accept the trusts conferred upon them by these presents upon the understanding that they said parties of the second part and their successors in trust, shall not nor shall either of them be liable or accountable for the acts, default or negligence of any agent, agents or attorney who may be appointed by them or either of them under or by virtue of or for the purposes of these presents to do any of the matters or things herein provided for if such agent or agents or attorney be selected with reasonable care: nor shall either or any trustee hereunder be liable or accountable for any mis-conduct, negligence or default of any other trustee hereunder; nor shall said parties of the second part, or their successors in the trust, incur any liability or

186 responsibility whatever in consequence of allowing the railway company or any railroad company under it through lease, contract or otherwise, to have or retain possession or use of the said equipment and rolling stock at any time furnished for the use of the railway company by the parties of the second part or their successors in the trust as herein provided: and that the parties of the second part and their successors in the trust shall not be liable for any destruction, deterioration, loss or damage to any of the property covered hereby or mentioned herein, or for anything whatsoever in connection with this trust except willful mis-

conduct or gross negligence; and that the parties of the second part and their successors in the trust shall not be personally liable for any debts contracted by them for damages to persons or property carried or injured or for salaries or non-fullfilment of contracts during any period while it or they shall manage the trust property or premises upon entry as aforesaid, but that such debts and liabilities shall be and constitute a first and paramount charge upon the trust funds and property and in case the parties of the second part or their successors shall retake possession of any of the property covered hereby or mentioned herein and shall use or operate the same as herein provided in addition to such indemnity as may be required under the terms hereof from the person or persons requesting them to do so, they shall be indemnified out of the moneys and property which shall come into their hands for all claims and demands against them.

Article twenty-second. The trustees under this mortgage or either of them and their successors in the trust may at any time resign the trust hereby created by giving notice of such resignations
187 in writing to the party of the first part or its successors, any vacancy in the office of trustees or trustee hereunder whether created by resignation or otherwise may be permanently filled by the appointment of new trustees or a new trustee by an instrument or concurrent instrument in writing executed under the hands and seals of the holders of a majority in interest of the bonds secured hereby and then outstanding, of their attorneys in fact thereunto duly authorized; but the board of directors of the party of the first part or its successors may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above provided. Any new trustees or new trustee appointed as aforesaid whether by a permanent or temporary appointment shall upon its, his or their appointment and without any other act, deed or conveyance become and be vested with all the estates trusts, rights, powers and duties of the trustees or trustee in whose place it, he or they shall have been appointed; but nevertheless the respective parties hereto and their successors and assigns shall and will upon request, make execute and deliver all such releases, conveyances, and assurances as shall be appropriate to vest in and confirm and assure to such new trustees or new trustee such estates, trusts, rights, powers and duties according to the intent above expressed.

The trustees or trustee under this indenture shall receive just compensation for all services which they or either of them may render in connection with the trust, to be paid by the railway company or out of the trust estate.

Article twenty-third. It is mutually agreed that the term or words the trustee or the trustees or the said trustee or the said trustees as used in this indenture shall be held and construed to mean
188 the trustees or trustee for the time being, whether original or new, and that all the covenants, stipulations, promises and

agreements herein contained by or on behalf of the party of the first part hereto shall be and are binding upon its successors and assigns whether so expressed or not.

The parties of the second part hereby accept the trusts conferred upon them by these presents.

In witness whereof the said Louisville, New Albany and Chicago Railway Company the said party of the first part has caused these presents to be signed by its president and sealed with its corporate seal and attested by its secretary; and to testify their acceptance of the trusts hereby created the said Central Trust Company of New York has caused this instrument to be signed in its behalf by its vice-president, sealed with its corporate seal and attested by its secretary and the said James Murdock has hereunto affixed his hand and seal the day and year first above written.

LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY,
By SAMUEL THOMAS, *President.*

Attest:
[SEAL.] W. H. LEWIS, *Secretary.*

CENTRAL TRUST COMPANY OF NEW YORK,
By E. FRANCIS HYDE, *Second Vice-President.*

Attest:
[SEAL.] C. H. P. BABCOCK, *Secretary.*

JAMES MURDOCK. [SEAL.]

189 STATE OF NEW YORK, } ss:
County of New York, }

Be it remembered that on this 6th. day of September, A. D. 1894 before me a notary public residing in said State and Kings county personally appeared Samuel Thomas, president of the Louisville, New Albany and Chicago Railway Company, personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged the- he, on behalf of said railway company and by authority of its board of directors had signed and delivered said instrument as the free and voluntary act of the said railway company for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and affixed my official seal this 6th. day of September, 1894.

[SEAL.] JAMES J. MURPHY,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

STATE OF ILLINOIS, }
County of Cook, } ss:

Be it remembered that on this 8th. day of September, A. D. 1894 before me, a notary public, residing in said State and county, personally appeared W. H. Lewis secretary of Louisville, New Albany and Chicago Railway Company personally known to me to be such secretary and personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he on behalf of said railway company and by authority of its board of directors had signed the said instrument and affixed thereto the official corporate seal of said railway company as the free and voluntary act of the said Louisville, New Albany and Chicago
190 Railway Company for the uses and purposes therein set forth: that he knew the corporate seal of said company and that the seal so affixed is said corporate seal.

In witness whereof I have hereunto set my hand and affixed my official seal this 8th day of September, 1894.

[SEAL.]

CHAS. E. BRYNE,
Notary Public.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that on this 13th. day of September, A. D. 1894 before me, a notary public residing in said State, city and county, personally appeared E. Francis Hyde 2d. vice-president of the Central Trust Company of New York, personally known to me to be the 2d vice-president of the said company and personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he, on behalf of the said trust company, and by authority of its board of trustees had executed the said instrument as the free and voluntary act of the said trust company for the uses and purposes therein set forth.

Also personally appeared before me at the same time C. H. P. Babcock secretary of the said trust company personally known to me to be such secretary and personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he on behalf of the said trust company and by like authority had signed the said instrument and affixed thereto the official corporate seal of said trust company as the free and voluntary act of said trust company for the uses and purposes therein set forth; that he knew the corporate seal of said
191 trust company and that the seal so affixed is said corporate seal.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of September, 1894.

[SEAL.]

FRANK B. SMIDT,
Notary Public, 289, N. Y. Co.

STATE OF OHIO, }
County of Allen, } ss:

Be it remembered that on this 11th. day of September, 1894 before me a notary public residing in said State and county personally appeared James Murdock, personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal this 11th. day of September, 1894.

[SEAL.] JAS. W. HALFHILL,
Notary Public, Allen County, Ohio.

Recorded Oct. 2", 1894 at 2 p. m.
B. A. VOGEL, *R. W. Co.*

192 *Decree of Foreclosure.*

Plaintiff offered in evidence a decree of foreclosure in the United States court in the case of "The Farmers' Loan and Trust Company and John H. Barker *vs.* The Louisville, New Albany and Chicago Railway Company, and others. (Identified by the reporter as Exhibit F.)

Defendant objected to the introduction of this decree of foreclosure in evidence, on the ground, first: that the owner of these lands is not made a party to the suit; second: these lands are not described in the decree, and the decree is insufficient to establish title to these lands in the plaintiff. The court overruled the objection, to which ruling of the court the defendants at the time, excepted. The said decree of foreclosure being then read and given in evidence, was in the words and figures following, to-wit:

EXHIBIT F.

Circuit Court of the United States, District of Indiana.

THE FARMERS' LOAN AND TRUST COMPANY and JOHN H. Barker, Complainants,
against
THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY Company and Others, Defendants. } No. 9401.

Consolidated cause.

(Copy.)

193 *Decree of Foreclosure and Sale.*

TURNER, McCLURE & ROLSTON,
22 *William Street, New York City, Solicitors for Complainants The Farmers' Loan and Trust Company and John H. Barker.*
BUTLER, NOTMAN, JOLINE & MYNDERSE,
54 *Wall Street, New York City, and*
FLOYD A. WOODS, *Indianapolis, Ind., Solicitors for Complainants Central Trust Company of New York, John H. Stotsenburg, and James Murdock.*

At a regular term of the circuit court of the United States for the district of Indiana, held at the court rooms, at the city of Indianapolis, on the 23d day of January, 1897.

Present: Hon. William A. Woods, circuit judge.

THE FARMERS' LOAN AND TRUST COMPANY and John H. Barker, Complainants,
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railway Company and Others, Defendants. } No. 9401. Chancery.

194 This consolidated cause came on to be heard at this term upon the bill of complaint of the complainants The Farmers' Loan and Trust Company and John H. Barker, and the amended and supplemental bill of complaint of said complainants The Central Trust Company of New York and John H. Stotsenburg, and upon the bill — complaint of the complainants Central Trust Company of New York and James Murdock, and upon the exhibits to said several bills and upon the answers of the defendants thereto, and upon the several orders, papers and proceedings in this cause, and was

argued by counsel, and thereupon, upon consideration thereof, it was found by the court that all and singular the material allegations of the bills are true as therein alleged and the equity of this cause is with the complainants in said several bills; and it was ordered, adjudged and decreed, that the mortgage set forth in the bill of complaint herein of the complainants The Farmers' Loan and Trust Company and John H. Barker made by the defendant The Louisville New Albany and Chicago Railway Company to said complainants, and bearing date the first day of January, 1886, is a valid and subsisting mortgage and constitutes a lien upon the mortgaged premises, property and franchises which are described in said mortgage as follows (the words "party of the first part" being used to designate the said defendant Louisville, New Albany and Chicago Railway Company):

"All the railway of the party of the first part in the city of Louisville, in the State of Kentucky, and extending from New Albany, on the Ohio river, to Michigan City in the State of Indiana, and from the city of Chicago, in the State of Illinois, to the Indiana State line, under leasehold right, and from said State line to the city of Indianapolis, in the State of Indiana, including the railway lying and being in all of said cities, and terminal rights and facili-
195 ties and approaches thereto, the same being about four hundred and seventy-five miles in length, and running through the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, Laporte, Marion Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in said State of Indiana, and Jefferson county in said State of Kentucky, and Cook county in said State of Illinois, and also all branches thereof, including all the property of every sort or nature now owned by said railway company, and all that it may in the future acquire for the purposes and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood, and supplies of every kind, belonging or appertaining to the railway company, also all the tolls, incomes, issues and profits out of the said property, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part, in and to any and all real estate belonging to the said party of the first part, also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents, that the said railway company shall and doth convey to the said trustees, all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or

description the same may be, at the date of these presents owned or possessed by the said railway company, or which may at any
196 time hereafter during the continuance of this trust be acquired by the said railway company for purposes connected with or appertaining to the railroads or railways above mentioned or described; and also all choses in action, of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps inventories and documents in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind or description, real, personal or mixed, and wherever the same may be situate, that may at any time, before or after the date of this indenture, be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways; all of which it is hereby covenanted shall inure by way of accretion to the benefit and advantage of said trustees, and by way of further and better security."

That said mortgage also constitutes a first lien upon 9,999 shares of the capital stock of the Chicago and Western Indiana Railroad Company, of the par value of $100 each; 2,399 shares of the capital stock of the Belt Railway Company, of Chicago, of the par value of $100 each; 11,990 shares of the capital stock of the Bedford and Bloomfield Company, of the par value of $50 each; and 2,990 shares of the Orleans, West Baden and French Lick Springs Railway Company, of the par value of $100 each; all which said corporate shares have been deposited with and are held by The Farmers' Loan and Trust Company, one of said complainants, as trustee under the said mortgage of January 1st, 1886, under and by virtue of a certain collateral trust agreement dated May 18, 1866, whereby said
197 corporate shares are deposited and pledged as further security for the bonds issued under the said mortgage of January 1st, 1886.

It was also further ordered, adjudged and decreed that the lien of said mortgage dated January 1st, 1886, is subsequent and subsidiary to the liens of two other prior mortgages made by said defendant railway company; namely, a mortgage dated July 1st, 1880, made to John C. New and Washington C. De Pauw, as trustees, covering a portion of the above-described premises, and a mortgage dated August 10th, 1881, made to John C. New, as trustee, covering another portion of the above-described premises; but the lien of the said mortgage dated January 1st, 1886, made to said complainants herein as aforesaid, is prior to any other lien upon the property of said defendant railway company in favor of any party to this cause, except as herein stated.

It was also further ordered, adjudged and decreed that, as further security for the bonds secured by said mortgage dated January 1st, 1886, the defendant The Orleans, West Baden and French Lick Springs Railway Company (the said corporation whose stock was

owned by the defendant Louisville, New Albany and Chicago Railway Company and was expressly pledged as further security, as aforesaid, for the bonds issued under said mortgage of January 1st, 1886), on or about December 12th. 1896. made and duly executed a certain instrument in writing in the way of a confirmatory mortgage or deed of trust to said complainants as trustees of and under said mortgage of January 1st, 1886, and therein and thereby granted and conveyed to said complainants, as such trustees, all the railways of said Orleans, West Baden and French Lick Springs Railway Company from French Lick to Orleans, Orange county, about 17 miles in length, all being in the State of Indiana, together with all lands, rights of way, tracks, lines, rails, bridges, ways buildings,
198 structures, fences, fixtures, franchises, privileges and rights of the said Orleans, West Baden and French Lick Spring Railway Company, of every kind and nature whatsoever, it being in said conveyance covenanted that said premises and property should inure by way of benefit and advantage to said trustees, and by way of better and additional security for the payment of bonds issued under said mortgage dated January 1st, 1886; and that thereby all the said property included in said conveyance of December 12th, 1896, became and was and now is part and parcel of the property covered by said mortgage of January 1st, 1886.

It was also further ordered, adjudged and decreed, that as further security for the bonds secured by said mortgage dated January 1st, 1886, the defendant The Bedford and Bloomfield Railroad Company (the said corporation whose stock — owned by the defendant Louisville, New Albany and Chicago Railway Company and was expressly pledged as further security as aforesaid, for the bonds issued under said mortgage of January 1, 1886), on or about December 12th, 1896, made and duly executed a certain instrument in writing in the way of a confirmatory mortgage or deed of trust to said complainants as trustees of and under said mortgage of January 1st, 1886, and therein and thereby granted and conveyed unto said complainants as such trustees all the railway of the said Bedford and Bloomfield Railroad Company from Switz City in Green county, to Bedford in Lawrence county, about 41 miles in length, all being in the State of Indiana, together with all the lands, rights of way, track, lines, rails, bridges, ways, buildings, structures, fences, fixtures, franchises and privileges and rights of said Bedford and Bloomfield Railroad Company of every kind and nature whatsoever, it being expressly covenanted that said premises and property should inure by way of bene-
199 fit and advantage to said trustees, and by way of better and additional security for the payment of the bonds issued under said mortgage dated January 1st, 1886; and that thereby all the said property included in said last-mentioned conveyance of December 12th, 1896 became and was and now is part and parcel of the property covered by said mortgage dated January 1st, 1886.

It was also further ordered, adjudged and decreed that there have been issued and are now outstanding and secured by said mortgage

dated January 1st, 1886, 4,700 of the bonds mentioned and described therein for $1,000 each, aggregating $4,700,000 of principal, together with coupons for interest thereunto appertaining, and that default was made in the payment of interest due upon said mortgage on the 1st day of October, 1896.

It was also further ordered, adjudged and decreed that the mortgage set forth in the bill of complaint herein of the complainants The Central Trust Company of New York and John H. Stotsenburg, made by the defendant Louisville, New Albany and Chicago Railway Company to said complainants bearing date May 1st, 1890, is a valid and subsisting mortgage and constitutes a lien upon the mortgaged premises, property and franchises described in said mortgages as follows (the words "party of the first part" and "railway company," in said description, being used to designate the defendant Louisville, New Albany and Chicago Railway Co.):

"All the present and in future to be acquired railway system and property of the said party of the first part, of every kind and nature, and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and franchises now owned or at any time hereafter to be acquired by it, being more particularly described as follows:

All the present line of railway extending from New Albany,
200 Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield railroad, extending from Bedford to Switz City, in Indiana, and also its other proprietary and owned line of railroad, called the Orleans, West Baden and French Lick Springs railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal facilities in the city of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the city of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the city of Indianapolis, Indiana, and also all its leasehold and contract rights, trackage and terminal facilities vested in the party of the first part by virtue of its certain written contract with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company, and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the city of New Albany, Indiana, and the city of Louisville, Kentucky, the before mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and operated by it being about five hundred and twelve miles in length, and situate in the counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe,

White, Pulaski, Starke, Laporte, Marion, Hamilton, Boone,
201 Clinton, Carroll, Jasper, Newton, and Lake, in the State of Indiana, and Cook county, in the State of Illinois, and Jefferson county, in the State of Kentucky; and also all other railroads, extensions and branch lines which the railway company, party of the first part, may at any time hereafter create, own or acquire, whether by construction, purchase, consolidation or otherwise, whether within the State of Indiana, or in any other State, including and conveying by these presents all the property of every sort or nature, real, personal and mixed, now owned by said railway company and all that it may in the future add, construct or acquire, for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, whether now owned or hereafter to be constructed or acquired, together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the railway company; also all the tolls, incomes, issues and profits, arising out of the said property and its operation, and all rights to receive and recover the same, also all the estate, right, title and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the buildings thereon erected it being the true intent and meaning of these presents that the said railway company, party of the first part, shall and doth convey to the said trustees all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all
202 manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, or which may, at any time hereafter, during the continuance of this trust, be acquired by the said railway company for purpose- connected with or appertaining to the railroads or railways above mentioned or described, or intended to be hereby conveyed, whether now in existence or at any time hereafter to be constructed or acquired, whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in anywise referring or relating to the property or franchise hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind and description, real personal or mixed, and wherever the same may be situate, that may, at any time, before or after the date of this indenture, be acquired by or for the said railway company, for purpose- connected with or appertain-

ing to said railroads or railways, either now owned or hereafter to be acquired, all of which it is hereby covenanted shall enure, by way of accretion, to the benefit and advantage of said trustees and by way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contract rights and franchises which the said railway company now owns, or at any time hereafter may own, as fully and to the same extent as if all such property were now in existence and owned by the said railway company, and were specifically described herein and conveyed hereby."

203 That said mortgage also constitutes a lien upon said shares of stock deposited with and held by said Farmers' Loan and Trust Company under and by virtue of said agreement dated May 18th, 1886, subject only to the lien of said Farmers' Loan and Trust Company and said John H. Barker, as trustees under said mortgage dated January 1st, 1886; and that the lien of said mortgage of May 1st, 1890, upon all of said property, is subsequent and subordinate only to the lien of said mortgage of January 1st, 1886, and to the liens of said prior mortgages hereinbefore mentioned upon the properties covered by said prior mortgages respectively.

It was also ordered, adjudged and decreed that there have been issued and are now outstanding and secured by said mortgage dated May 1st, 1890, 2,800 of the bonds mentioned and described therein for $1,000 each, aggregating $2,800,000 of principal, together with coupons for interest thereto annexed, and that default was made in the payment of interest due upon said mortgage on the 1st day of November, 1896.

It was also ordered, adjudged and decreed that the mortgage set forth in the bill of complaint herein of the complainants The Central Trust Company of New York and James Murdock, made by the defendant Louisville, New Albany and Chicago Railway Company to said complainants, and bearing date the 1st day of September, 1894, is a valid and subsisting mortgage and constitutes a lien upon the mortgaged premises, property and franchises described in said mortgage as follows (the words "party of the first part" and "railway company," in said description, being used to designate the defendant Louisville, New Albany and Chicago Railway Company).

"All the railway system and property of the said party of the first part, of every kind and nature, and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and

204 franchises thereunto appertaining, being more particularly described as follows: All the present line of railway extending from New Albany, Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield railroad, extending from Bedford to Switz City, in Indiana, and also its other proprietary and

owned line of railroad, called the Orleans, West Baden and French Lick Springs railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal facilities in the city of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the city of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the city of Indianapolis, Indiana and also all its leasehold and contract rights, trackage and terminal facilities vested in the party of the first part by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company, and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the city of New Albany, Indiana, and the city of Louisville, Kentucky, the before mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and operated by it, being about five hundred and twelve miles in length, and situate in the counties of
205 Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, Laporte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in the S-ate of Indiana, and Cook county, in the State of Illinois, and Jefferson county, in the State of Kentucky; including and conveying by these presents all the property of every sort or nature, real, personal and mixed, now owned by said railway company for the purpose of and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turntables, fences, walls fixtures, franchises, privileges and rights of the railway company, and also all the locomotives, engines, tenders, cars carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the railway company; also all the tools, incomes, issues and profits, arising out of the said property and its operation, and all rights to receive and recover the same, also all the estate, right, title, and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents that the said railway company party of the first part, shall and doth convey to the said trustees all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the

date of these presents owned or possessed by the said railway company, whether within or without the State of Indiana;
206 and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories, and documents in anywise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind and description, real personal or mixed, and wherever the same may be situate, that may at any time, before or after the date of this indenture, be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways, hereby conveyed, all of which it is hereby covenanted shall enure, by way of accretion, to the benefit and advantage of said trustees, and by way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contract rights and franchises which the said railway company now owns, as fully and to the same extent as if all such property were specifically described herein and conveyed hereby."

That the said mortgage also constitutes a lien upon said shares of stock deposited with and held by said Farmers' Loan and Trust Company under and by virtue of said agreement dated May 18th, 1886, subject only to the lien of said Farmers' Loan and Trust Company and said John H. Barker as trustees under said mortgage dated January 1st, 1886, and to the lien of said Central Trust Company of New York and said John H. Stotsenburg as trustees under said mortgage dated May 1st, 1890; and that the lien of said mortgage dated September 1st, 1894, upon all of said property above
207 mentioned and described is subsequent and subordinate only to the lien of said mortgage dated January —, and to the liens of said prior mortgages above mentioned upon the properties covered by said prior mortgages respectively.

That said mortgage dated September 1st, 1894, also includes and embraces certain other property consisting of five certain parcels of railroad equipment, that is to say:

1. 300 box cars built by the Haskell & Barker Car Company, costing $140,010.

2. 250 flat cars built by the Haskell & Barker Car Company, costing $96,250.

3. 200 coal cars and 50 stock cars built by the Haskell & Barker Car Company, costing $102,750.

4. 300 box cars and 250 flat cars built by Oliver Adams agent, costing $293,224.

5. 1,000 flat cars built by the Haskell & Barker Car Company, costing $370,000.

All of said equipment included in said five parcels being marked

"Owned by Central Trust Company of New York, Louisville, New Albany and Chicago equipment mortgage."

And that said mortgage dated September 1st, 1894, is a first lien upon said railroad equipment, and prior to any other lien thereon in favor of any party to this cause.

It was also further ordered, adjudged and decreed, that the premises and property covered by said mortgage, dated January 1st, 1886, and said mortgage dated May 1st, 1890, and said mortgage dated September 1st, 1894, are the same and identical with the exception that said mortgage dated January 1st, 1886 covers
208 property not covered by said other mortgages, and consisting of the right, title and interest of said Orleans, West Baden, and French Lick Springs Railway Company, conveyed and mortgaged by said companies to the complainants Farmers' Loan and Trust Company and John H. Barker, as trustees, by said conveyances dated December 12, 1896; and with the exception that said mortgage dated September 1st. 1894, covers and is a first lien on said five parcels of railroad equipment, and said other mortgages only cover and embrace the right, title and interest of the defendant Louisville, New Albany and Chicago Railway Company in and to said five parcels of railroad equipment, subject to the lien of said mortgage dated September 1st, 1894.

It was also ordered, adjudged and decreed that there have been issued and are now outstanding and secured by said mortgage dated September 1st, 1894, 709 of the bonds mentioned and described therein for $1,000 each, aggregating $709,000 of principal, together with coupons for interest thereunto appertaining and that default was made in the payment of interest due upon said mortgage on December 1st, 1896.

It was also ordered, adjudged and decreed that the amount due upon said bonds secured by said mortgage dated January 1st, 1886, which is in default and which is now due and payable, is as follows:

Interest due October 1st, 1886	$141,000.00
Interest thereon to the date of this decree	2,638.06
Total	$143,638.06

That the amount to become due upon the said bonds secured by said mortgage dated January 1st, 1886, and which is unpaid, is $4,700,000 with interest at six per cent. per annum from October 1st, 1896.

That the amount due upon said bonds secured by said mortgage dated May 1st, 1890 which is in default and which is now
209 due and payable is as follows:

Interest due November 1st, 1896	$70,000.00
Interest thereon to date of this decree	959.68
Total	$70,959.68

That the amount due upon the said bonds secured by said mortgage dated May 1st, 1890, and which is unpaid, is $2,800,000 with interest at five per cent. per annum from November 1st, 1896.

That the amount due upon the said bonds secured by said mortgage dated September 1st, 1894, which is in default, and which is now due and payable, is as follows:

Interest due December 1st, 1896	$17,725.00
Interest thereon to the date of this decree	154.38
Total	$17,879.38

That the amount to become due upon the said bonds secured by said mortgage dated September 1st, 1894, and which is unpaid, is $709,000 with interest at five per cent. per annum from December 1st, 1896.

It was also ordered, adjudged and decreed that the defendant Louisville, New Albany and Chicago Railway Company shall within ten days after the entry of this decree pay or cause to be paid to the complainants the Farmers' Loan and Trust Company and John H. Barker, or to the clerk of this court, for the use and benefit of the holders of the outstanding bonds secured by said mortgage dated January 1st, 1886, and of the unpaid interest warrants or coupons appertaining thereto, the sum of $143,638.06 in gold coin of the United States of America, with interest thereon from the date of entry of this decree to the date of payment, being the sum adjudged to be due and payable by said defendant, and secured by
210 said mortgage dated January 1st, 1886; and that within the same time the defendant Louisville New Albany and Chicago Railway Company pay or cause to be paid to the complainants Central Trust Company of New York and John H. Stotsenburg, or to the clerk of this court, for the use and benefit of the holders of the outstanding bonds of said defendants secured by said mortgage dated May 1st, 1890, and of the unpaid interest warrants or coupons appertaining thereto, the sum of $70,595.68 in gold coin of the United States of America, with interest thereon from the date of the entry of this decree to the date of payment, being the sum adjudged to be due and payable by said defendant and secured by said mortgage dated May 1st, 1890; and that within the same time the defendant Louisville, New Albany and Chicago Railway Company pay, or cause to be paid, to the complainants Central Trust Company of New York and James Murdock, or to the clerk of this court, for the use and benefit of the holders of the outstanding bonds of said defendant secured by said mortgage dated September 1st, 1894, and of the unpaid interest warrants of coupons appertaining thereto, the sum of $17,879.38 in gold coin of the United States of America, with interest thereon from the date of the entry of this decree to the date of payment, being the sum adjudged to be due and payable by said defendant and secured by said mortgage dated September 1st, 1894.

It was also ordered, adjudged and decreed that, unless the said payment, as hereinbefore directed with respect to said bonds secured by said mortgage dated January 1st, 1886, shall be made within the time directed as aforesaid, said mortgage be foreclosed, and all property, rights and interest conveyed thereby, and upon which said mortgage is a lien, as the said property is hereinbefore particularly described, be sold as hereinafter directed, and that under and
211 by said sale all equity of redemption of the defendants, and of any and all persons claiming by, through and under the said defendants, or represented by any of the parties to this suit, (except the interest of the Central Trust Company of New York and James Murdock, as trustees under said mortgage dated September 1, 1894, in and to said five parcels of railroad equipment hereinbefore mentioned and described) of, in and to said mortgaged premises, property, rights and franchises, and every part and parcel thereof embraced or included, or intended to be included in the said mortgage, be foreclosed, and cut off and forever barred; that unless the said payment, as hereinbefore directed with respect to said bonds secured by said mortgage, dated May 1st, 1890, shall be made within the time directed as aforesaid, the said mortgage be foreclosed, and all property, rights or interests conveyed thereby, and upon which said mortgage is a lien, as the said property is hereinbefore particularly described, and including all material and supplies on hand at the time of the sale purchased or held by the receiver, be sold as is hereinafter directed, and that under and by said sale all equity of redemption of the defendants, and of any and all persons claiming by, through or under them, or represented by any of the parties to this suit (except the interest of the Farmers' Loan and Trust Company and John H. Barker, as trustees under said mortgage dated January 1st, 1886, and excepting the interest of the Central Trust Company of New York and James Murdock, as trustees under said mortgage dated September 1, 1894, in and to said five parcels of railroad equipment hereinbefore mentioned and described), of, in and to said mortgaged premises, property, rights and franchises, and every part and parcel thereof, embraced or included, or intended to be included, in the said mortgage, be foreclosed and cut off and forever barred; that, unless the said payment as hereinbefore directed
212 with respect to said bonds secured by said mortgage dated September 1st, 1894, shall be made within the time directed as aforesaid, the said mortgage be foreclosed, and all property, rights or interests conveyed thereby, and upon which said mortgage is a lien as the said property is hereinbefore particularly described, be sold as hereinafter directed, and that under and by said sale all equity of redemption of the defendants and of any and all persons claiming by, through or under them or represented by any of the parties to this suit (excepting the interests of the Farmers' Loan and Trust Company, and John H. Barker, as trustees under said mortgages, dated January 1st, 1886, and of the Central Trust Company of New York and John H. Stotsenburg, as trustees under said mort-

gages, dated May 1st, 1890, in and to that portion of the property covered by said mortgage dated September 1st, 1894, upon which said mortgages dated respectively January 1st, 1896, and May 1st, 1890 are prior liens as hereinbefore adjudged), of, in and to said mortgaged premises property rights, and franchises and every part and parcel thereof embraced or included, or intended to be included in the said mortgage, be foreclosed and cut off and forever barred. That the foreclosures above directed shall not nor shall either or any of them affect the prior liens of said mortgages hereinbefor*d* mentioned made by said Louisville New Albany and Chicago Railway Company, the one dated July 1st, 1880, and made to John C. New and and Washington C. De Pauw, as trustees, and the other dated August 10th, 1881, and made to John C. New as trustees.

It was also adjudged and decreed that the railway properties covered by said respective mortgages constitute one railroad system and cannot be sold in separate parcels without injury, to the rights of the creditors and of the parties in interest.

It was also ordered, adjudged and decreed that the property covered by said mortgage dated January 1st, 1886, and the prop-
213 erty covered by said mortgage dated May 1st. 1890, and the property covered by said mortgage dated September 1st, 1894, shall, subject to the provisions aforesaid, and in default of the payment of the sums hereinbefore found to be due and directed to be paid, be sold without valuation, appraisement, or redemption at public auction to the highest bidder or bidders on the mortgage premises at the round house of the defendant railway company near the Belt Line junction in the city of Indianapolis, Indiana, on a day and at an hour to be fixed by the special master herein appointed in his advertisement of sale, such day and hour to be fixed in accordance with the request of the solicitors for the complainants, named in the bills filed herein for the foreclosure of said respective mortgages, and previous notice of the time place and terms of said sale shall be given by publication of a brief general advertisement referring to this decree for further particulars and for a more specific description of the property herein ordered to be sold, which advertisement shall be published at least once in each week for the terms of four weeks preceding the date of the sale in four newspapers of general circulation, one published in New Albany, Indiana; one in Indianapolis, Indiana; one in Chicago, Illinois, and one in the city of New York. The said special master may, at the request of the compa*l*inants named in the bills filed herein for the foreclosure of said several mortgages, or at the request of the solicitors for such complainants, adjourn or postpone said sale, and may without further notice proceed with said sale on any day to which the said sale may have been thus adjourned. The special master may give such further notice of sale in addition to the notice before described as he may think proper or as the said complainant may request. The complainants or any bondholder or bondholders may bid and purchase at said sale.

It was also ordered, adjudged and decreed that the said
214 sale shall be conducted as follows, that is to say: Said special master shall first offer for sale, separately and in one parcel, the property which is covered by said mortgage dated January 1st, 1886, as hereinbefore, found and decreed (upon which said property said mortgage dated May 1st, 1890, and said mortgage dated September 1st, 1894, are subsequent liens), the same being all the property hereinbefore mentioned and described, excepting only said five parcels of railroad equipment, but including said shares of capital stock deposited with said Farmers' Loan and Trust Company and the said property conveyed to said Farmers' Loan and Trust Company by said Orleans, West Baden and French Lick Springs Railway Company and said Bedford and Bloomfield Railroad Company. Said special master shall next offer for sale, separately and in one parcel, the property which is covered by said mortgage dated September 1st, 1894, and upon which said mortgage is a first lien, the same being said five parcels of railroad equipment hereinbefore mentioned and described. In making such sale the said special master shall accept no bid for the property so to be first offered for sale (being all the property hereinbefore described, except said five parcels of railroad equipment) for a sum less than $2,500,000, nor from any bidder who shall not place in his hands or deposit with him, at the time of making the bid, as a pledge that such bidder will make good his bid, if accepted by the court, the sum of $25,000 in money or certified check. In making such sale the said special master shall accept no bid for the said five parcels of railroad equipment from any bidder for a sum less than $500,000, nor from any bidder who shall not place in his hands or deposit with him at the time of making the bid as a pledge that such bidder will make good his
215 bid if accepted by the court, the sum of $5,000 in money or certified check. After having offered said property separately as hereinbefore provided, said special master shall then offer for sale the entire property covered by said mortgage dated January 1st, 1886, and said mortgage dated May 1st, 1890, and said mortgage dated September 1st, 1894, including said five parcels of railroad equipment, as one parcel without valuation, appraisement or redemption, and if the highest bid received by him for the same shall exceed the aggregate amount of the highest bids for the two parcels when offered separately, then the whole shall be struck off and sold as an entirety to the person making such bid for the whole, and the proceeds of sale shall be divided into two parts in proportion to the amounts bid separately on said properties and distributed in the same manner as if said property had been sold separately. Said special master shall accept no bid for the property as an entirety from any bidder for a sum less than $3,000,000, nor from any bidder who shall not place in his hands or deposit with him at the time of making the bid as a pledge that such a bidder will make good his bid if accepted by the court, the sum of $30,000 in money or certified check.

It was also ordered, adjudged and decreed, that of the price for which said property shall be sold there shall be paid in cash at the time of sale the cash deposit or deposits hereinbefore required, which shall be received as a part of the purchase price, and also at the same time, and from time to time thereafter, such further portions of said purchase price shall be paid in cash as the court may direct in order to meet the expense of this suit and the suits consolidated herein, and such receiver's indebtedness as shall have matured prior to the confirmation of sale herein, and to pay such claim, if any, against
the mortgaged property as the court may adjudge to be prior
216 in equity to the said mortgages. All sums of money received by said special master shall be paid by him into the registry of the court. The court reserves the right to reject any bid and to resell said premises and property upon the failure of any purchaser for twenty days to comply with any order of the court requiring payment. The balance of the purchase price not required to be paid in cash may either be paid in cash or the purchaser may satisfy and make good said balance of his bid, in whole or any part, by paying over and surrendering outstanding bonds and overdue coupons appertaining thereto, secured by said mortgage, dated January 1st, 1886, or outstanding bonds and overdue coupons appertaining thereto, secured by said mortgage, dated May 1st, 1890, or outstanding bonds and overdue coupons appertaining thereto, secured by said mortgage, dated September 1st, 1894, said bonds and coupons being received at such price or value as shall be equivalent to the amount that the holders thereof would be entitled to receive thereon in case the entire purchase price were paid in cash. All bonds and coupons that may be used to make such payment shall be surrendered to the special master and cancelled if the whole amount due thereon is applied upon the purchase price; but if less than the whole amount is applied, then the amount so applied shall be stamped or written upon said bonds and coupons which shall be returned to the holder. The foregoing provisions shall be applicable whether the said properties be sold in separate parcels or as an entirety. As soon as any sale or sales shall have been made by the special master in pursuance of this decree he shall report the same to this court for confirmation, further certifying to the court compliance by the purchaser or purchasers with the conditions of sale as hereinbefore prescribed. If any bid shall be
accepted by the court, and the person making the same shall
217 fail to comply — all the conditions of sale and all orders of the court in respect thereto, the sum deposited by the bidder shall be forfeited and shall be applied as the court may direct.

It was also ordered, adjudged and decreed that the purchaser or purchasers of any parcel at such sale shall, as part of the consideration for such sale, and in addition to the price bid, take the property purchased upon the express condition that he or they, or his or their assigns approved by the court will notwithstanding pay off and satisfy any and all receiver's indebtedness which shall not be

paid by the receiver herein out of the income and earnings of the mortgaged property, or which shall not be paid out of the proceeds of sale as hereinafter directed; and also any and all claims heretofore filed, or which may hereafter be filed within a period to be limited by an order of this court, in this cause or either of the causes consolidated herein in respect of the parcel so purchased, but only when and as the court shall allow such claims and adjudge the same to be prior in lien to the mortgages foreclosed in this suit or either of them, and shall determine the parcel in respect of which such claims shall be payable, and in accordance with the order or orders of the court allowing such claims and adjudging with respect thereto; and the purchaser or purchasers or their approved assigns shall be entitled to appeal from any and all orders or decrees of the court in respect to such claims or any of them, and shall have all the rights in respect to such appeals which the complainants herein or any of them would have in case such appeals had been taken by them. The court reserves the right to retake and resell said property in case of the failure or neglect of the purchaser or purchasers or his or their assigns approved by the court as aforesaid, to comply with any order of the court in respect to the payments of receiver's indebtedness or prior lien claims within
218 thirty days after the service of a certified copy of such order upon said purchaser or purchasers or his or their assigns.

It was also ordered, adjudged and decreed, that the fund or funds from the sale or sales of the properties above mentioned shall be applied as follows and in the following order, to wit:

First. To the payment of the costs of this suit and of the suits consolidated herein and of the ancillary suits brought in the circuit court of the United States for the northern district of Illinois by the same parties who are complainants herein, including all proper expenses of the sale herein ordered and such compensation as may be awarded by the court to said special master for making said sale, and the compensation of the complainants The Farmers' Loan and Trust Company and John H. Barker and the complainants Central Trust Company of New York and John H. Stotsenburg and James Murdock for their services, charges and expenses in the execution of their respective trusts, to be fixed and allowed by the court, and such proper allowances as the court may take for the fees and disbursements of the solicitors and counsel of said complainants, respectively, and next to the payment of such compensation as may be allowed to the receiver appointed in the suits consolidated herein and to the payment of any indebtedness of said receiver which has not been or shall not be paid out of the earnings and income of the property coming into the hands of said receiver, and which shall have matured and become payable at the time of the confirmation of sale herein. The above mentioned payments shall be apportioned between the funds received from such sale or sales and applicable respectively to the payment of said bonds secured by said several mortgages in such proportions as the court shall direct.

219 Second. The remainder of the fund derived from the sale of the property first to be offered for sale as hereinbefore directed being all the property hereinbefore described, except said five parcels of railroad equipments, shall be applied (1st) to the payment ratably of the interest due and unpaid and of the principal unpaid upon said bonds secured by said mortgages, dated January 1st, 1886, without preference of interest over principal or principal over interest: (2d) to the payment ratably of the interest due and unpaid and of the principal unpaid upon said bonds secured by said mortgage, dated May 1st, 1890, without preference of interest over principal or principal over interest; and (3d) to the payment ratably of the interest due and unpaid and of the principal unpaid upon said bonds secured by said mortgage, dated September 1st, 1894, without preference of interest over principal or principal over interest.

Third. The remainder of the fund derived from the sale of that portion of the property upon which said mortgage, dated September 1st, 1894, is a first lien as hereinbefore adjudged, the same being said five parcels of railroad equipment, shall be applied to the payment ratably of the interest due and unpaid, and of the principal unpaid upon said bonds secured by said mortgage, dated September 1st, 1894, without preference of interest over principal or principal over interest.

Should there be any surplus remaining after making the payments directed in this subdivision third, the same shall be added to the fund derived from the sale of the property other than said five parcels of railroad equipment, and shall be applied as directed in subdivision second above.

220 Fourth. Should there be any surplus after making the payments above directed, the same shall remain in the registry of the court to abide such order or decree as the court may make in respect thereto.

It was also ordered, adjudged and decreed, that William A. Van Buren be, and he is hereby, appointed special master to execute this decree, and, upon confirmation of the sale or sales hereby ordered and full compliance with the terms of sale by the purchaser or purchasers, to make, execute and deliver to the purchaser or purchasers thereof a deed or deeds of the property sold; and, upon the request of the purchaser or purchasers, and exhibition of the special master's deed or deeds, the receiver, having possession of the property sold, shall make, execute and deliver to the said purchaser or purchasers good and sufficient deeds of conveyance or evidence of transfer of any and all property sold which is vested in or standing in the name of said receiver, or to which said receiver has in any manner acquired title, and shall surrender to the purchaser or purchasers possession of the property sold; and, upon confirmation of said sale or sales and full compliance with the terms of sale by the purchaser or purchasers, he or they shall be entitled to a deed or deeds of assurance to be executed according to law by the defendant Louisville, New Albany and Chicago Railway Company, and the complainants The

Farmers' Loan and Trust Company and John H. Barker and The Central Trust Company of New York and John H. Stotsenburg and James Murdock.

The court reserves the right in term time or at chambers to appoint another person special master with like powers in case of the death or disability to act of the special master hereby designated, or in case of his resignation or failure to act or removal by the court.

It was also ordered, adjudged and decreed that the pur-
221 chaser or purchasers of the property herein decreed to be sold shall be invested with, and shall hold, possess and enjoy the said mortgaged premises and property herein decreed to be sold, or so much thereof as shall be purchased by him or them, and all the rights, privileges and franchises appertaining thereto as fully and completely as the said Louisville, New Albany and Chicago Railway Company now holds and enjoys, or has heretofore held or enjoyed the same: and further, that the said purchaser or purchasers shall have and be entitled to hold the said railroads and property freed and discharged of, and from liens of the mortgages foreclosed in this suit and from the claims of the parties to this suit, or any of them.

It was also ordered, adjudged and decreed, that in case there should be any deficiency in payments of the amounts hereinbefore required and directed to be paid so that said amounts shall not be paid in full then said special master shall report to the court the amount of such deficiency, and the complainants as trustees of said mortgages respectively shall have judgement against the said defendant Louisville, New Albany and Chicago Railway Company for the amounts due, and shall have execution therefor pursuant to the rules and practice of this court.

It was also ordered, adjudged and decreed that all questions not hereby disposed of and determined be reserved for future adjudication, the settlement of the same being held not to be necessary for the purpose of this decree, and the court reserves the right to make such further orders at the foot of this decree as may seem just and proper. And the court reserves full power to adjudge with respect to the income of the receivership and the rights of creditors in and to the same.

222 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States, within and for said district, do hereby certify that the above and foregoing is a full and true copy of the decree of said court in the cause of The Farmers' Loan and Trust Company *et al. vs.* The Louisville, New Albany and Chicago Railway Company *et al.*, made and entered on the 23rd day of January, 1897, as fully as the same appears upon the records now in my office.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 28" day of April, A. D. 1898.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

DISTRICT OF INDIANA:

I, John H. Baker, judge of the district court of the United States, for said district, do certify that at the date of the foregoing certificate, Noble C. Butler was, and now is, the clerk of the circuit court of the United States for said district, and that his attestations aforesaid is in due form of law.

Witness my hand this 28" day of April, 1898.

[SEAL.] JOHN H. BAKER, *Judge.*

223 *Special Master's Report of Sale.*

Plaintiff offered in evidence special master's final report of sale in the case referred to in the last preceding decree. (Identified by the reporter as Exhibit G.)

Defendant- objected to the introduction of the special master's final report of sale, for the reason that there is nothing so far authorizing any sale or report of sale of the lands in controversy, and no persons having interest in these lands were made parties, or affected thereby.

The court overruled the objection, to which ruling of the court, the defendants at the time, excepted, and the said special master's final report of sale being then read and given in evidence, was in the words and figures following, to-wit:

EXHIBIT G.

Circuit Court of the United States, District of Indiana.

THE FARMERS' LOAN AND TRUST COMPANY and John H. Barker
vs.
THE LOUISVILLE, NEW ALBANY AND CHICAGO Railway Company *et al.*
No. 9401. Chancery.

Consolidated cause.

Special Master's Final Report.

I, William A. Van Buren, heretofore appointed special master under certain final decrees of foreclosure and sale entered by the circuit court of the United States for the district of Indiana and the circuit court of the United States for the northern district of Illinois

in the suits therein pending under the above title, respectfully reports to the court:—

224 That Fredrick P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company, have fully complied with the terms of sale as rendered in and by said decrees and by the order of confirmation made and entered in the district of Indiana on March 10, 1897, and in the northern district of Illinois on March 12, 1897.

That the said purchasers have paid the entire balance of the purchase price of the properties sold to them, to-wit, the sum of $2,971,000; that they have made such payment in part by delivering to me outstanding bonds with all coupons appertaining and attached thereto overdue and not due secured by the mortgage made to the Farmers' Loan and Trust Company and John H. Barker, as trustees, dated January 1, 1886, to the number of 4591, and outstanding bonds with all coupons appertaining and attached thereto overdue and not due secured by a mortgage to the Central Trust Company of New York and James Murdock, trustees, dated September 1, 1894, to the number of 706, said bonds and coupons being received at such price or value as were equivalent to the amount that the holders thereof would be entitled to receive thereon in case the entire purchase price were paid in cash.

That the price or value of each of said six per cent bonds so received, with coupons appertaining thereto maturing October 1, 1896, and thereafter, is the sum of $531,235.17.

That the price or value of each of said bonds secured by the mortgage of September 1, 1894, so received with coupons appertaining thereto maturing December 1, 1896, and thereafter is the sum of $704.3174.

Of the said bonds dated January 1, 1896, those bearing the numbers following were not delivered to me, to-wit: 53, 72, 77, 237, 238, 239, 240, 241, 243, 244, 245, 273, 302, 303, 352, 353, 360, 361,
225 362, 430, 493, 496, 530, 544, 598, 599, 600, 751, 753, 780, 781, 800, 806, 816, 818, 865, 945, 947, 960, 1040, 1041, 1042, 1043, 1044, 1113, 1132, 1169, 1170, 1171, 1172, 1173, 1269, 1272, 1301, 1448, 1449, 1450, 1451, 1452, 1549, 1611, 1683, 1719, 1760, 1761, 1770, 1771, 1772, 2142, 2510, 2527, 2528, 2529, 2546, 2584, 2626, 2631, 2761, 2778, 2813, 2814, 2834, 2835, 2956, 3082, 3115, 3116, 3117, 3505, 3563, 3835, 3909, 3920, 3977, 4034, 4035, 4036, 4037, 4038, 4489, 4496, 4497, 4500, 4519, 4520, 4521, 4596, 4618.

And of the said bonds dated September 1, 1894, those bearing the numbers following were not delivered to me, to-wit: 172, 173, 174.

That the said purchasers have paid to me in cash the further sum of $34,851.26, making the entire amount of the purchase price, and I have paid the sum into the registry of this court.

That I have made, executed and delivered to the said purchasers a deed of the property sold as in and by said decrees required.

I annex hereto a schedule marked "A" showing the method of ascertainment of the dividend value of each outstanding bond secured by said mortgage of January 1, 1886, and September 1, 1894, respectively.

All of which is respectfully submitted.

WILLIAM A. VAN BUREN,
Special Master.

226

SCHEDULE "A."

Total bid		$3,001,000
Less—		
Clerk's fees in Indiana	576.65	
Docket fee	20.	
Clerk's fees in Illinois	105.	
Special master's compensation	3,500.	
Expenses of advertising	631.95	
	4,833.60	
Balance to be distributed	2,996,166.40	
		3,001,000

By the terms of the decree this balance is to be divided between the consolidated six per cent. bonds and the equipment bonds in proportion to the amounts bid, separately on the parcels offered for sale.

$2,500,000 having been bidden for the railroad and $500,000 for the equipment, the consolidated six per cent. bonds are entitled to 5/6 of the balance and the equipment bonds to 1/6 thereof.

5/6 of $2,996,166.40 equal $2,496,805.33.

4700 consolidated bonds each entitled to $531.23517;

1/6 of $2,996,166.40, $499.361.067.

709 equipment bonds each entitled to $704.3174.

The purchasers paid into court at the time of sale	30,000.
They delivered to me 4591 consolidated 6's at $531.23517 each	2,438,900.66
And 706 equipment bonds at $704.3174 each	497,248.08
They paid me in cash March 18, 1897	34,851.26
	$3,001,000.

Dated March 19, 1897,

W. A. VAN BUREN,
Special Master.

227 Circuit Court of the United States, District of Indiana.

THE FARMERS' LOAN AND TRUST COMPANY and JOHN H. BARKER, Complainants,
vs.
THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY Company *et al.*, Defendants.
} No. 4901.

Consolidated cause.

Supplemental Report of Special Master.

I, William Van Buren, heretofore appointed special master under certain final decrees of foreclosure and sale, entered by the circuit court of the United States for the district of Indiana and the circuit court of the United States for the northern district of Illinois, in the suits therein pending under the above title, in addition to and supplemental to my final report heretofore on the 30th day of March, 1897, filed with this court, respectfully report that upon the face of each of the 4,591 bonds and overdue coupons thereto attached, dated January first, 1886, delivered to me, as in my final report set forth, I did stamp and set forth that said bond with coupons was received by me from said purchaser at a price or value of $531,23517; and upon the face of each of the 706 bonds and overdue coupons thereto attached, dated September first, 1894, delivered to me as in my said final report set forth, I did stamp and set forth that said bonds with coupons *was* received by me from said purchasers at a price or value of $704,3174. And after so stamping said bonds I deposited the same, subject to my order and control, in the vaults of the Central Trust Company of New York, at No. 54 Wall street, New York.

228 Respectfully submitted.

W. A. VAN BUREN,
Special Master.

Dated at Indianapolis, April 9, 1897.

In the Circuit Court of the United States for the District of Indiana, November Term, 1896, April 9, 1897.

Before the Honorable William A. Woods, Judge.

THE FARMERS' LOAN AND TRUST COMPANY and JOHN H. BARKER, Complainants,
vs.
THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY and Others, Defendants.

Consolidated cause.

Entry of Approval of Special Master's Final Report.

Comes now William A. Van Buren, heretofore appointed special master under certain final decrees of foreclosure and sale entered by the circuit court of the United States for the district of Indiana and the circuit court of the United States for the northern district of Illinois, in the suits therein pending under the above title, and by his final report filed March 30, 1897, and by his supplemental report filed April 9, 1897, which reports are in the words and figures following; (here insert) shows the payment by Frederick P. Olcott, Henry W. Poor and Henry C. Rouse as a committee of bondholders of the Louisville, New Albany & Chicago Railway Company of the money bid by them at the sale made by the said special master on the 10th day of March, 1897, the compliance by said purchasers with the terms of their bid, and the making and delivery to them by
229 the said special master of a deed to the property so purchased by them at said sale, and the court having seen and examined said reports does in all things approve and confirm the same.

District of Indiana.

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of the report of the special master filed in said court on the 30th day of March, 1897, and of the supplemental report of the special master filed in said court on the 9th day of April 1897, and of the order of court made and entered in said court on the 9th day of April, 1897, all in the cause of the Farmers' Loan and Trust Company *et al. vs.* The Louisville, New Albany and Chicago Railway Company *et al.* as fully as the same remain on file and appears of record in my office.

Witness my hand and the seal of said court, this 10th day of April 1897.

[SEAL.]

NOBLE C. BUTLER, *Clerk.*

District of Indiana.

I, John H. Baker, judge of the district court of the United States, for said district, do certify that at the date of the foregoing certificate, Noble C. Butler was, and now is, the clerk of the circuit court of the United States, for said district, and that his attestations aforesaid is in due form of law.

Witness my hand, this 10th day of April 1897.

JOHN H. BAKER, *Judge.*

230 *Special Master's Deed.*

Plaintiff offered in evidence a certified copy of the special master's deed in the foreclosure case just preceding the offering of this evidence. (Identified by the reporter as Exhibit H.)

Defendants objected to the introduction of the special master's deed, because there is nothing introduced authorizing the execution of any such deed; there is nothing in the deed describing or conveying or purporting to convey the property in controversy.

The court overruled the objection, to which ruling of the court, the defendants at the time, excepted. And the said special master's deed being then read and given in evidence was in the words and figures following, to-wit:

EXHIBIT "H."

Special Master's Deed.

This indenture, made this nineteenth day of March, A. D. 1897, by and between William A. Van Buren, as special master, party of the first part, and Frederic P. Olcott, Henry W. Poor, and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company, parties of the second part, witnesseth:

Whereas, a certain decree was rendered and entered in the circuit court of the United States for the district of Indiana, on the 23rd day of January, 1897 in a certain cause then pending in said court entitled The Farmers' Loan and Trust Company and John H. Barker, complainants, against The Louisville, New Albany and Chicago Railway Company and others, defendants (consolidated cause), and a certain other decree was rendered and entered in the circuit
231 court of the United States for the northern district of Illinois, on the 27th day of January, 1897, in a certain cause therein pending between the same parties; and

Whereas, in and by said decree it was adjudged that in default of the payment of the sums therein found to be due, and directed to be paid at the time and in the manner therein directed, the property

described in said decrees should be sold as provided and ordered in and by said decrees, and that under and by said sale all equity of redemption of the defendants in the suit above mentioned, and of any and all persons claiming by, through or under them, or represented by any of the parties to said suits, of, in and to the mortgaged premises, property, rights, franchises, and every part and parcel thereof, embraced or included, or intended to be included, in the several mortgages foreclosed in said suits, except as in said decrees otherwise specifically provided, be foreclosed and cut off and forever barred; and

Whereas, the said defendant The Louisville, New Albany and Chicago Railway Company wholly failed to pay the sums of money set forth and found to be due and adjudged to be paid in and by said decrees within the time ordered, or other wise, and thereupon William A. Van Buren, the special master named in said decrees, gave due notice of the time, place and terms of said sale in accordance with the provisions and directions of said decrees and pursuant to said decrees, and *to* the time and place specified in said notice, said special master offered for sale at public auction to the highest bidder or bidders, first in two separate parcels as required by said decrees, and then as an entirety and in one parcel, without valuation, appraisement or redemption, the entire property directed
232 by said decrees to be sold and described in the said notice of sale, and thereupon sold and struck off the entire property in one parcel to Frederic P. Olcott, Henry W. Poor and Henry C. Rouse as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company, they being the highest bidders therefor, for the sum of three million and one thousand dollars, and said last mentioned bid exceeded the aggregate of the highest bids for the two parcels offered separately as aforesaid; and

Whereas, the said special master duly reported said sale to the court and filed his report of sale on the 10th day of March, 1897; and

Whereas, on the 10th day of March 1897, a decree was made by the circuit court of the United States for the district of Indiana, in the suit above mentioned therein pending and thereafter a decree was also made by the circuit court of the United States for the northern district of Illinois in said suit pending therein, confirming said special master's report of sale and ratifying, approving and confirming said sale and making the same absolute; and the said purchasers having fully complied with the terms of said decrees and orders and with all the conditions of sale and the orders of court with respect thereto, and having paid the purchase price as provided in said decrees;

Now, therefore, in consideration of the premises, and for the purpose of giving full effect to said sale, and in execution of the orders and decrees of said courts above set forth, and in consideration of the payment of the purchase price by the said purchasers, and in accordance with such decrees, the said William A. Van Buren, as

special master as aforesaid, has, granted, sold and conveyed,
233 and, by these presents, doth grant, sell and convey unto Frederic P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company, all and singular the property directed to be sold in and by said decrees of foreclosure and sale and therein described, namely;

All the railway system and property of every kind and nature formerly of the Louisville, New Albany and Chicago Railway Company, together with all the equipment, appurtenances and franchises thereunto appertaining, being more particularly described as follows: All the lines of railway formerly belonging to and operated by the Louisville, New Albany and Chicago Railway Company, extending from New Albany, Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of Chicago, Illinois, and also all the lands, station buildings, tracks and terminal facilities formerly of the Louisville, New Albany and Chicago Railway Company, in the city of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the city of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights, and terminal properties, stations, sidings and franchises in the city of Indianapolis, Indiana, and also all its leasehold and contract rights, trackage and terminal facilities formerly vested in said Lousiville, New Albany and Chicago Railway Company by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company and the
234 Louisville Bridge Company, whereby the trains and traffic of the said Louisville, New Albany and Chicago Railway Company were moved and handled bet-een the city of New Albany, Indiana, and the city of Louisville, Kentucky; also all the railway formerly of the Bedford and Bloomfield Railroad Company extending from Switz City, in Greene county, Indiana, to Bedford, in Lawrence county, Indiana, about forty-one miles in length, all being in the State of Indiana; also all the railway formerly of the Orleans, West Baden and French Lick Springs Railway Company extending from French Lick to Orleans, Orange county, about seventeen miles in length, all being in the State of Indiana; the before mentioned systems of railroads, exclusive of tracks leased and operated under lease or contract, being about five hundred and twelve (512) miles in length and situate in the counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, Laporte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake in the State of Indiana, and in Cook county in the State of Illinois and Jefferson

county in the State of Kentucky; including and conveying by these presents all the property of every sort or nature, real personal and mixed, heretofore owned by said several and respective railway or railroad companies for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings shops, tanks, piers wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of said railway and railroad companies and each of them, and also all locomotives, engines, tenders, cars. carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of
235 every kind belonging or appertaining to said companies or any or either of them; also all estate, right, title and interest of said railroad or railway companies and each of them in and to any and all real estate; and all leasehold lands, with buildings thereon erected; and all and all manner of franchises of said railroad and railway companies of every kind and description, however derived and wheresoever situate, and all and all manner of real estate, or interest in real estate, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, which at the time of the entry of the decrees aforesaid was owned or possessed by said railway and railroad companies and each of them, whether within or without the State of Indiana, and also all choses in action and contract rights of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in any wise referring or relating to the property or franchises hereby conveyed; also nine thousand nine hundred and ninety-nine shares of the capital stock of the Chicago and Western Indiana Railroad Company of the par value of one hundred dollars each; two thousand three hundred and ninety-nine shares of the capital stock of the Belt Railway Company of Chicago of the par value of one hundred dollars each; eleven thousand nine hundred and ninety shares of capital stock of the Bedford and Bloomfield Railroad Company of the par value of fifty dollars each; and two thousand nine hundred and ninety shares of the Orleans West Baden and French Lick Springs Railway Company of the par value of one hundred dollars each. Also five certain parcels of railroad equipment, that is to say: (1) 300 box cars built by the Haskell & Barker Car Company, costing $140,010; (2) 250 flat cars built by the Haskell & Barker Car
236 Company, costing $96,250; (3) 200 coal cars and 50 stock cars built by the Haskell & Barker Car Company, costing $102,750; (4) 300 box cars and 250 flat cars built by Oliver Adams, agent, costing $293,224; (5) 1,000 flat cars built by the Haskell & Barker Car Company, costing $370,000; all of said equipment included in said five parcels, being marked "Owned by the Central Trust Company of New York, trustee, Louisville, New Albany and Chicago Railway Company equipment mortgage."

To have and to hold the same unto said Frederic P. Olcott, Henry W. Poor, and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company their heirs, executors, administrators, successors and assigns forever; subject, nevertheless, to the terms, provisions and conditions contained in said decrees of foreclosure and sale.

In witness whereof, the said William A. Van Buren, as special master, has hereunto set his hand and seal the day and year first above written.

WILLIAM A. VAN BUREN, [L. S.]
Special Master.

In presence of (on page 5 the words "and contract rights" interlined before execution)

ADRIAN H. JOLINE.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered, that on this 18th day of March, A. D. 1897, before me, a notary public, duly commissioned and qualified, personally appeared William A. Van Buren, special master, the grantor in the foregoing deed, and acknowledged the execution of the same.

In witness whereof, I have hereunto set my hand and
237 affixed my official seal the day and year aforesaid.

LELAND S. STILLMAN,
[L. S.] *Notary Public, Kings County.*

Certificate filed in N. Y. Co.

Recorded March 31, 1897, at 1¾ o'clock p. m.

238 STATE OF INDIANA, }
Marion County, } ss:

RECORDER'S OFFICE.

I, William E. Shilling, recorder for said county, do hereby certify that the above and foregoing is a true and complete copy of the record of the special master's deed William A. Van Buren, special master to Frederic P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bondholders L. N. A. & Chi. Ry. Co. as the asame now appears of record in the recorder's office of Marion county, in the State of Indiana, in Deed Record No. 294 at page 7.

In witness whereof, I have hereunto set my hand and official seal, at Indianapolis, this 5th day of November 1897.

[SEAL.] W. E. SHILLING,
Recorder of Marion County, Indiana.

Deed of Olcott and Others.

Plaintiff offered in evidence a certified copy of the deed of Frederic P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bond holders, to the plaintiff in this case, (Identified by the reporter as Exhibit I.)

Defendants objected to the introduction of this deed, because there is nothing in the proceedings introduced in evidence vesting any title to the lands in controversy in Frederic P. Olcott, the grantor, or tending in any way to support the issues in this case.

The court overruled the objection, to which ruling of the court, the defendants, at the time, excepted.

239–240 And the said deed of Olcott *et al.* being then read and given in evidence was in the words and figured following, to-wit:

EXHIBIT "I."

This indenture, made this 31st day of March, A. D. 1897, by and between Frederic P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company, parties of the first part, and the Chicago, Indianapolis and Louisville Railway Company, a corporation created and existing under the laws of the State of Indiana, party of the second part.

Whereas, at a certain sale made on the 10th day of March, 1897, by William A. Van Buren, special master, the parties hereto of the first part became the purchasers of the railroads and property formerly belonging to the Louisville, New Albany and Chicago Railway Company and hereinafter described, said sale being made in pursuance of decrees of foreclosure and sale duly entered of record by the circuit court of the United States for the district of Indiana, and the circuit court of the United States for the northern district of Illinois, in suits pending in said courts entitled "The Farmers' Loan and Trust Company, and John H. Barker, complainants, against The Louisville, New Albany and Chicago Railway Company and others, defendants, consolidated cause;" and

Whereas, in order to carry into effect said sale, and pursuant to the decree of said courts, said William A. Van Buren as special master, granted sold and conveyed to the parties hereto of the first part all and singular the property so purchased at said sale by deed of conveyance bearing date the nineteenth day of March, 1897, to which reference is hereby made for further particulars; and

241 Whereas, the said Louisville, New Albany and Chicago Railway Company, and the Bedford and Bloomfield Railroad Company, and the Orleans, West Baden and French Lick Springs Railway Company have, by way of confirmation of title, duly ex-

ecuted, signed, sealed and delivered a deed of further assurance in confirmation of their purchase so made as aforesaid, conveying and releasing unto the said parties of the first part all the interest of said corporations in and to the lines of railroad, property, equipment, appurtenances and franchises so sold and conveyed by the special master as aforesaid; and

Whereas, William H. McDoel, the receiver in said suits, as thereto required by the decrees and orders of said courts, has made, executed and delivered unto the said parties of the first part *of* a deed of conveyance or transfer of all property so sold which is vested in or standing in the name of said receiver, or to which said receiver had in any manner acquired title, including all materials and supplies on hand at the time of said sale purchased or held by said receiver; and

Whereas, the parties of the first part have created and constituted the party of the second part a corporation under the name of Chicago, Indianapolis and Louisville Railway Company, under and in pursuance of the provisions of an act of the General Assembly of the State of Indiana, approved March 3, 1865, entitled "An act to authorize, regulate and confirm the sale of railroads, to enable the purchasers of the same to form corporations, and to exercise corporate powers, and to define their rights, powers and privileges; to enable such corporations to purchase and construct connecting and branch roads, and to operate and maintain the same;" and
242 a certain act supplemental thereto, approved December 20, 1865; and

Whereas, the said party of the second part was created and organized as a corporation as aforesaid for the purpose of carrying out the designs and purposes of the parties of the first part in making such purchase, and to own, possess and enjoy all and singular said railroads, property, privileges, immunities and franchises so purchased by and conveyed to and vested in the said parties of the first part;

Now therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the sum of twenty-three million one hundred and nine thousand dollars, to them paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted sold and conveyed, and by these presents do grant, sell and convey unto the said party of the second part, all the railroads and property purchased by them at the sale aforesaid made on the 10th day of March 1897 and conveyed and transferred to them by said deed made by said William A. Van Buren, as special master, and by said deed made by said The Louisville, New Albany and Chicago Railway Company, The Bedford and Bloomfield Railroad Company and The Orleans, West Baden and French Lick Springs Railway Company and by said deed made by said William H. McDoel, as receiver as aforesaid, the same being more particularly described as follows:

All the railway system and property of every kind and nature

formerly of the Louisville, New Albany and Chicago Railway Company, together with all the equipment, appurtenances and franchises thereunto appertaining, being more particularly de-
243 scribed as follows: All the line of railway formerly belonging to and operated by the Louisville, New Albany and Chicago Railway Company, extending from New Albany, Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of Chicago, Illinois, and also all the lands, station buildings, tracks and terminal facilities formerly of the Louisville, New Albany and Chicago Railway Company in the city of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the city of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the city of Indianapolis, Indiana; and also all its leasehold and contract rights, trackage and terminal facilities, formerly vested in said Louisville, New Albany and Chicago Railway Company, by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company and the Louisville Bridge Company, whereby the trains and traffic of the said Louisville, New Albany and Chicago Railway Company were moved and handled between the city of New Albany, Indiana, and the city of Louisville, Kentucky; also, all the railway formerly of the Bedford and Bloomfield Railroad Company extending from Switz City in Green county, Indiana, to Bedford in Lawrence county, Indiana, about forty-one miles in length, all being in the State of Indiana; also all the railway formerly of the Orleans, West Baden and French Lick Springs Railway Company extending from French Lick to Orleans, Orange county, about seven-
244 teen miles in length, all being in the State of Indiana; the before mentioned system of railroads, exclusive of tracks leased and operated under lease or contract, being about five hundred and twelve miles in length and situate in the counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, Laporte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton, and Lake in the State of Indiana, and in Cook county in the State of Illinois and Jefferson county in the State of Kentucky; including and conveying by these presents all the property of every sort or nature, real, personal and mixed, heretofore owned by said several and respective railway or railroad companies for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways buildings, shops, tanks, piers wharves, structures, erections, turntables, fences, walls fixtures, franchises, privileges and rights of

said railway and railroad companies and each of them, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to said companies or any or either of them; also all estates, right, title and interest of said railroad or railway companies and each of them in and to any and all real estate; and all leas-hold lands, with the buildings thereon erected; and all and all manner of franchises of said railroad or railway companies of every kind and description, however derived and wheresoever situate, and all and all manner of real estate, or interest in real estate, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, which at the time of the entry of the decree aforesaid was owned or possessed by said railway and railroad companies
245 and each of them, whether within or without the State of Indiana, and also all choses in action and contract rights of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in anywise referring or relating to the property or franchises hereby conveyed; also nine thousand nine hundred and ninety-nine shares of the capital stock of the Chicago and Western Indiana Railroad Company of the par value of one hundred dollars each; two thousand three hundred and ninety-nine shares of the capital stock of the Belt Railway Company of Chicago of the par value of one hundred dollars each; eleven thousand nine hundred and ninety shares of the capital stock of the Bedford and Bloomfield Railroad Company of the par value of fifty dollars each; and two thousand nine hundred and ninety shares of the Orleans, West Baden and French Lick Springs Railway Company of the par value of one hundred dollars each. Also five certain parcels of railroad equipment, that is to say; (1) 300 box cars built by the Haskell & Barker Car Company, costing $140,010; (2) 250 flat cars built by the Haskell & Barker Car Company, costing $96,250; (3) 200 coal cars and 50 stock cars built by the Haskell & Barker Car Company, costing $102,750; (4) 300 box cars and 250 flat cars built by Oliver Adams, agent, costing $293,224; (5) 1,000 flat cars built by the Haskell & Barker Car Company, costing $370,000; all of said equipment included in said five parcels being marked "Owned by Central Trust Company of New York, trustee, Louisville, New Albany and Chicago Railway Company equipment mortgage." And also any and all property, of every description whatsoever, which was vested in or standing in the name of said William H. McDoel as receiver, or to which said William H. McDoel as receiver in any manner
246 acquired title including all meterials and supplies on hand at the time of said sale purchased or held by said receiver.

To have and to hold the same unto the said party hereto of the second part, its successors and assigns forever, subject to the terms, provisions and conditions contained in said deed from said William

A. Van Buren, as special master, to said parties of the first part, and to the terms, provisions and conditions contained in the decrees of said courts above mentioned in the suits above mentioned.

In witness whereof, the said Frederic P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company, have hereunto set their hands and seals the day and year first above written.

F. P. OLCOTT. [——.]
HENRY W. POOR. [——.]
HENRY C. ROUSE. [——.]

Signed sealed and delivered in the presence of
As to Henry W. Poor
FRANCIS L. PATTON.

(As to F. P. Olcott)
HENRY W. CALHOUN.

(As to Henry C. Rouse)
J. H. HILL.

STATE OF NEW YORK,
City and County of New York, } ss:

Before me, the undersigned, a notary public in and for the city and county of New York, duly commissioned and qualified, personally appeared Frederic P. Olcott and Henry W. Poor, two of the grantors in the foregoing deed, and acknowledged the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 1st day of April, 1897.

247

[L. S.] LELAND S. STILLMAN,
Notary Public, Kings County.

Certificate filed in N. Y. Co.

THE STATE OF TEXAS,
County of Galveston. }

Before me, the undersigned, a notary public in and for the county and State aforesaid, duly commissioned and qualified, personally appeared Henry C. Rouse, one of the grantors in the foregoing deed, and acknowledged the execution of same.

In witness whereof, I have hereunto set mu hand and affixed my official seal, this 5th day of April. 1897.

[L. S.] M. L. MALEVINSKY,
Notary Public in and for Galveston Co., Texas.

Recorded April 22, 1897, at 3 o'clock p. m.

STATE OF INDIANA, } ss:
Marion County, }

RECORDER'S OFFICE.

I, William E. Schilling, recorder of said county, do hereby certify that the above and foregoing is — true and complete copy of the record of the deed executed by Frederic P. Olcott, *et al.* the committee of bond holders of the L. N. A. & Chi. Co. to the Chicago Indianapolis and Louisville Railway Company as the same now appears of record in the recorder's office of Marion county in the State of Indiana, in Deed Record No. 294 at page 435.

In witness whereof, I have hereunto set my hand and official seal, at Indianapolis, this 10th day of November 1897.

248 W. E. SHILLING,
[SEAL.] *Recorder of Marion County, Indiana.*

Articles of Association of Plaintiff.

Plaintiff offered in evidence a certified copy of the articles of association of the plaintiff railway company. (Identified by the reporter as Exhibit J.)

Defendants objected to the introduction of the articles of association, because they are immaterial, and articles of incorporation do not entitle the plaintiff to, take title to, or ownership over the lands in suit.

The court overruled the objection, to which ruling of the court, the defendants, at the time, excepted.

And the said articles of association being then read and given in evidence were in the words and figures following to-wit:

EXHIBIT "J."

UNITED STATES OF AMERICA, }
State of Indiana. }

OFFICE OF THE SECRETARY OF STATE.

I, Union B. Hunt, secretary of state of the State of Indiana, hereby certify that the annexed pages contain a full true and complete copy of the articles of association or agreement in writing of Chicago, Indianapolis and Louisville Railway Company with the several certificates thereon, filed March 25th, 1897, as the same appears on file, as the law directs, in this office.

In testimony whereof, I hereunto set my hand and affix the
249 great seal of the State of Indiana. Done at my office, in the city of Indianapolis, this 8th day of May, A. D. 1889.

UNION B. HUNT,
[SEAL.] *Secretary of State.*

Ten cents revenue stamp.

Articles of Association of the Chicago, Indianapolis and Louisville Railway Company.

These articles of association witness:

That, whereas, on January 23rd, 1897, the circuit court of the United States for the district of Indiana duly allowed and entered of record a final decree in a certain suit in equity pending in the said court, wherein The Farmers' Loan and Trust Company, John H. Barker, Central Trust Company of New York, and others were complainants, and The Louisville New Albany and Chicago Railway Company The Orleans, West Baden and French Lick Springs Railway Company and The Bedford and Bloomfield Railroad Company were defendants, wherein and whereby certain mortgages executed by the said above mentioned railway companies respectively were ordered to be foreclosed and all and singular the property described in said mortgages and decree, including the entire lines of railroad of said mortgagor corporations together with all the equipment, appurtenances, material, supplies, leasehold, estates, franchises and privileges thereunto appertaining were directed to be offered and sold at public auction to the highest bidder by William A. Van Buren, special master, upon the terms and conditions set forth in such decree; and

250 Whereas, a final decree of foreclosure and sale in all respects similar to the above mentioned decree of the circuit court for the district of Indiana was on January 27th, 1897, allowed and entered of record by the circuit court of the United States for the northern district of Illinois in a certain suit therein pending, wherein the said Farmers' Loan and Trust Company John H. Barker and The Central Trust Company of New York and others were complainants, and the said above named Louisville, New Albany and Chicago Railway Company and others were defendants, wherein and whereby the said circuit court of the United States for the northern district of Illinois ordered the sale of all and singular the above mentioned railroad property equipment, appurtenances and franchises by the said William A. Van Buren special master; and

Whereas, the said special master on March 10th, 1897 after having given full notice of such sale by advertisement as required by the said decree in that behalf, did at Indianapolis, Indiana, in all respects in compliance with the said decree and orders of sale, offer at public auction to the highest bidder all and singular the said lines of railway equipment, appurtenances and franchises and other property, situate in the States of Indiana, Illinois and Kentucky described in and by said decrees, and at such sale the undersigned, Frederic P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company, bid for all and singular the said described prop-

erties as a unit, in one parcel, the sum of three million and one thousand dollars, which sum was the highest and best bid made at such sale, and thereupon the said above described railroad properties, equipment, appurtenances, franchises and other property,
251 situate in the three States aforesaid, were struck off by said special master to said Olcott, Poor, Rouse, as a committee as aforesaid, as the highest and best bidders therefor at the said above mentioned sum of three million and one thousand dollars; and

Whereas, the said William A. Van Buren, special master, duly reported the said sale to the said circuit court of the United States for the district of Indiana, and also to the circuit court of the United States for the northern district of Illinois, and such sale was in all things approved, ratified and confirmed by said courts; and

Whereas, under the order and decree of said last mentioned courts the said William A. Van Buren, special master, has executed and delivered unto the undersigned a deed of conveyance in writing, reciting the said decrees of foreclosure and the sale made thereunder and the confirmation thereof, and the compliance by the purchasers with the conditions of said decree and the terms of said purchase in so far as to entitle them to the conveyance and possession of all and singular the railroads, property, equipment, appurtenances, stocks and franchises so purchased by them as aforesaid, and thereupon conveying to and vesting in the said Olcott, Poor and Rouse the title to all and singular the railroads, property, equipment appurtenances, stocks and franchises described in the said decrees of foreclosure and sale, the same being more particularly described as the lines of railroad heretofore belonging to and operated by the Louisville, New Albany and Chicago Railway Company and situate in the counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, Laporte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton, and Lake in the State of Indiana, and in Cook county, in the State of Illinois, and in Jefferson county, in the State of
252 Kentucky; said lines extending from New Albany, Indiana, to Michigan City in the same State, and also from Indianapolis Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of Chicago, Illinois; including therein the branch line of railroad, called the Bedford and Bloomfield railroad, extending from Bedford to Switz City in Lawrence and Greene counties in Indiana; and also its other branch line of railroad called the Orleans, West Baden and French Lick Springs railway, extending from Orleans to French Lick, in Orange county, Indiana, together with all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks, and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago in the city of Chicago or elsewhere; also all its real estate, trackage, leas-hold and contract rights and terminal properties, stations, sidings and franchises in the city of Indianapolis, Indiana,

and also all its leasehold and contract rights, trackage and terminal facilities vested in the said Louisville, New Albany and Chicago Railway Company, by virtue of its contracts with the Jeffersonville, Madison and Indianapolis Railroad Company and the Pennsylvania Company. The said system of lines of railroad so purchased from and conveyed by the special master being about 512 miles of railroad, including all the property of every sort or nature, real, personal and mixed, owned by the said railway company, or purchased by the receiver of said courts for the purposes of or connected with or pertaining to the said railroads above mentioned, together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of the railway com-
253 pany, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the railway company, or in the custody of the receiver of the said courts at the time of the said sale, together with all the other property, rights, books, accounts, title deeds, franchises and privileges in and by said decrees of foreclosure and sale more specifically described, reference being thereto had; and

Whereas, the said Louisville, New Albany and Chicago Railway Company, and the said Bedford and Bloomfield Company and the said Orleans, West Baden and French Lick Springs Railway Company as thereto ordered and required by the decrees and orders of said courts have by way of confirmation of title duly executed, signed, sealed and delivered unto the said Olcott, Poor and Rouse, a deed of further assurances and confirmation of their purchase so made as aforesaid, conveying and releasing unto the said purchasers under said decrees of foreclosure all the interests of said corporation in and to the lines of railroad, property, equipment, appurtenances and franchises so sold and conveyed by the special master as aforesaid; and

Whereas, William H. McDoel, the receiver in said suits, as thereunto required by the decree*d* and orders of said courts, has made, executed and delivered unto said Olcott, Poor and Rouse a deed of conveyance or transfer of all property so sold which was vested in or standing in the name of said receiver or to which said receiver had in any manner acquired title, including all materials and supplies on hand at the time of said sale purchased or held by said receiver; and

Whereas, the said purchasers under such decrees of foreclosure and sale have in all things complied with the terms of said
254 decrees and made all the payments and performed all the conditions required of them by their said purchase, and the said courts have ordered the receiver of said property to deliver possession of all and singular the property so purchased by the undersigned at such foreclosure sale, and the undersigned are now in full

possession thereof as such purchasers, grantees of said special master and owners;

Now, therefore, for the purpose of carrying out the design and purposes of the undersigned in making such purchase and of creating and organizing a corporation under the laws of the State of Indiana, to own, possess and enjoy all and singular said railroads, property, privileges, immunities and franchises so purchased by, conveyed to and vested in the said purchasers, the undersigned do hereby associate themselves together and do hereby create and constitute a corporation under the provisions of an act of the General Assembly of the State of Indiana, approved, March 3rd, 1865, entitled "An act to authorize, regulate and confirm the sale of railroads, to enable the purchasers of the same to form corporations, and to exercise corporate powers, and to define their rights, powers and privileges; to enable such corporations to purchase and construct connecting and branch roads, and to operate and maintain the same" and a certain act supplemental thereto, approved December 20th, 1865, and such purchasers and associates do hereby, as authorized by the said statutes, agree and declare as follows:

First. They hereby form and constitute themselves and their associates and successors into a corporation which shall exist in perpetuity and be called the "Chicago, Indianapolis and Louisville Railway Company."

Second. On the filing of these articles of association and in-
255 corporation in the office of the secretary of state of Indiana, the said corporation to be called the "Chicago, Indianapolis and Louisville Railway Company" shall be thereupon constituted a corporation of said State and shall be thereupon vested with full title to all of said lines of railroad, properties, appurtenances, equipments and franchises so as aforesaid purchased by and conveyed to the undersigned to be thenceforth held, operated and enjoyed as the exclusive property of said corporation to be hereby created.

Third. Said corporation hereby created shall also have, exercise and enjoy with reference to the said railroad and property so to be vested in it all and singular the powers, privileges, rights, immunities and franchises in respect to said lines of railroad as completely in every respect as the same were held, exercised and enjoyed by the Louisville, New Albany and Chicago Railway Company, and the Orleans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Company under their original charters and amendments thereto. The said corporation shall also have, exercise and enjoy all and singular the powers, privileges, franchises and immunities granted and allowed by the aforesaid mentioned act of March 3rd, 1865, and the said supplemental act of December 20th, 1865, and all other general laws of the State of Indiana now in existence or hereafter to be enacted vesting powers and privileges in railway companies of such State.

Fourth. The capital stock of the corporation to be hereby formed shall be and is hereby fixed at the sum of fifteen millions, five hun-

dred thousand dollars ($15,500,000), with privilege of such increase hereafter as may be allowed by law. The said stock shall be divided into five million (5,000,000) or preferred stock, consisting of fifty thousand shares of one hundred dollars ($100.) each, and ten
256 millions, five hundred thousand dollars ($10,500,000) of common stock, consisting of one hundred and five thousand shares of one hundred dollars ($100) each.

Fifth. The property and business of the corporation hereby formed shall be managed by a board of directors which shall consist of eleven (11) persons.

The names and residences of the persons who shall constitute the first board of directors are as follows:

Samuel Thomas, New York city, N. Y.
Calvin S. Brice, Lima, Ohio.
John Greenough, New York city, N. Y.
John G. Moore, New York city, N. Y.
Edward R. Thomas, New York city, N. Y.
William H. McDoel, Chicago, Ills.
Gilbert G. Shaw, Chicago, Ills.
James Murdock, Lafayette, Ind.
Crawford Fairbanks, Terre Haute, Ind.
Volney T. Malott, Indianapolis, Ind.
E. C. Field, Chicago, Ills.

They shall continue in office until the third Wednesday of September, 1897.

In witness whereof, the said associates and incorporators have hereunto set their hands and seals this 25th day of March, 1897.

F. P. OLCOTT. [SEAL.]
HENRY W. POOR. [SEAL.]

In presence of
(As to Henry W. Poor)
FRANCIS L. PATTON, JR.

(As to F. P. Olcott)
FRANCIS L. PATTON, JR.

(As to Henry C. Rouse)
FRANCIS L. PATTORN, JR.

257 STATE OF NEW YORK, }
City & County of New York, } *ss:*

Be it remembered that on this 25th day of March, A. D. 1897, before me the undersigned, Charles Flynn, a notary public in and for the city, county and State of New York, personally appeared Francis L. Patton, Jr. the subscribing witness to the execution of the foregoing instrument, of lawful age, who being duly by me sworn upon his oath did depose and say: That on the 25th day of March,

1897, he saw the within named Frederick P. Olcott, Henry W. Poor and Henry C. Rouse, sign, seal and deliver the foregoing instrument as their act and deed, and this deponent at the same time signed his name as a witness of the execution of said instrument at the request and in the presence of said Frederick P. Olcott, Henry W. Poor and Henry C. Rouse, who were at the time over the age of twenty-one years and of sound mind and memory, and laboring under no disability, so far as deponent knows.

In witness whereof, I have hereunto set my hands and affixed my official seal the day and year aforesaid.

CHARLES FLYNN,
Notary Public, N. Y. Co.

(No seal affixed.)

Deed of James C. Brooks.

Plaintiff offered in evidence the original deed of James C. Brooks, the only surviving heir at law of James Brooks deceased, and Mary C. Brooks, his wife, to the Louisville, New Albany and Chicago Company, dated February 20th, 1896.

(Identified by the reporter as Exhibit "K.")

And the said deed being then read and given in evidence was in the words and figures following, to-wit:

EXHIBIT "K."

This indenture, made this 20th day of February 1896 be-
258 tween James C. Brooks, the only surviving heir at law of James C. Brooks, deceased and Mary C. Brooks, his wife of Chester county, Pennsylvania party of the first part, and the Louisville, New Albany and Chicago Railway Company, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of one dollar to him in hand paid by the said party of the second part receipt whereof is hereby acknowledged do hereby convey and quit claim unto the said party of the second part, its successors and assigns, real estate located in parts of sections 4 and 9, township 29 and range 4 west Pulaski county and State of Indiana and bounded and described as foliows, to-wit:

Beginning at the southwest corner of Yellow & Bill streets in the town or village of Francisville; thence south along the west line of said Bill street to the north line of Sherman avenue; thence west with said north line of Sherman avenue a distance of one hundred and fifty (150) feet; thence north parallel to said west line of Bill street to the south line of Yellow street; thence east with the south line of Yellow street a distance of one hundred and fifty (150) feet to the place of beginning, said piece or parcel of land being the same

platted and dedicated for depot grounds, and duly recorded April 8th 1862

To have and to hold the same, together with all and singular the privileges and appurtenances thereto appertaining and all rights, claims, titles and interests therein, of said party of the first part, unto the said party of the second part, its successors and assigns forever.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

259 Signed, sealed and delivered in the presence of—

JAS. C. BROOKS. [SEAL.]
MARY C. BROOKS. [SEAL.]

STATE OF PENNSYLVANIA, }
Chester County. }

I, Alawilda Haines a notary public in and for said county in the State aforesaid, do hereby certify that the within named James C. Brooks and Mary C. Brooks, his wife personally known to me as the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein stated and shown.

Given under my hand and seal, this seventh day of June A. D. 1896.

[SEAL.] ALAWILDA HAINES,
Notary Public.

My commission expires June 7th, 1897.

(Endorsed on back:) Warranty deed. The heirs of James Brooks deceased to the Louisville, New Albany & Chicago Railway Co. Location: (198 Custom House place.)

STATE OF INDIANA, }
Pulaski County, } *ss:*

I do hereby certify that this instrument was filed for record in the recorder's office of said Pulaski county, this 24 day of
260 July A. D. 1896, at 8 o'clock a. m., and duly recorded in Deed Book 59, page- 131-2.

L. E. McKINSEY, *R. P. C.*

Already entered.
JOS. RIGGS,
Aud'r L. N. A. & C. R'y.

Entered in Right of Way Record Book Page —.

—— ——,
Chief Engineer.

Feed paid.

261 *Deposition of J. N. Hayworth.*

Plaintiff offered in evidence the deposition in this case, of James N. Hayworth, auditor of Pulaski county, and the said deposition being then read and given in evidence was in the words and figures following to wit:

THE STATE OF INDIANA, } ss:
White County, }

In the White Circuit Court, April Term, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY Company
vs.
PATRICK MCGUIRE and MEDARY M. HATHAWAY. } Cause No. 902.

The defendants in the above entitled cause are hereby notified that on the tenth day of May, 1899, at the office of the county auditor in the town of Winamac in the county of Pulaski and State of Indiana between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, before some officer authorized to take depositions, the plaintiff will proceed to take depositions of the following named witnesses, to-wit: James A. Hayworth and W. P. Williams to be used in evidence, on the trial of the above entitled cause, in the circuit court of White county, in the State of Indiana, and will, if necessary, continue said taking from day to day, until said depositions are completed.

Dated this 4th day of May 1899.

E. C. FIELD,
Attorney for Plaintiff.

We acknowledge service of the above notice, and waive certificate of the official character of officer before whom said depositions are taken, this 4 day of May 1899.

CHAS. C. SPENCER,
Attorney for Defendants.

262 *Deposition.*

The deposition of James N. Hayworth, a witness produced and sworn before me, a notary public in and for Pulaski county, Indiana, on the 10th day of May, 1899, pursuant to the attached notice.

This deposition is taken for and on behalf of the plaintiff in a certain action now pending in the circuit court of White county, Indiana, wherein The Chicago, Indianapolis and Louisville Railway

Company is plaintiff and Patrick McGuire and Medary M. Hathaway are defendants.

Present on behalf of the plaintiff its attorney, Mr. Kinnan, and on behalf of the defendants H. A. Steis and Medary M. Hathaway, their attorneys.

The said JAMES N. HAYWORTH being first duly sworn by me to testify to the truth, the whole truth and nothing but the truth relating to said cause deposes as follows:

Examined by Mr. KINNAN, on direct examination:

Q. You may state your name, age, residence, and occupation?
A. James N. Hayworth, age 35, auditor of Pulaski county.
Q. Auditor of Pulaski county, Indiana?
A. Yes, sir.
Q. As auditor of Pulaski county, Indiana, you may state whether or not you have on file, or in your custody the tax schedule or schedules of property, filed for taxation by the Louisville, New Albany & Chicago Railway Company?
A. What dates do you want?
263 Q. Well, for 1897, and years prior thereto?
A. Yes, sir.
Q. I will ask you to look at Schedule B of the property filed by the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, for 1897, and state what your record shows for 1897, on the schedule of property filed by that company for taxation of the property in Francesville for that year?
A. In answering that question the witness reads as follows from the schedule referred to in the question:
"Schedule B. Railroad track. Belonging to or controlled by the Louisville, New Albany Railway Company in Pulaski county, Indiana April 1st, 1897. Township city or town. Salem township. Francesville. Part section. Section 4—Section 4 township 29 range 4 west. Description. 3 lots (town) 360 x 150 located on west side Bill street between Lyman and Yellow streets." Under column marked "Value" "depot." Under column marked "Value of stations and other improvements on right of way" "$300.00."
Q. I will ask you if you will make an exact copy of this Schedule "B" of 1897, above mentioned, mark it Exhibit "A," attach it to and make it a part of your deposition?
A. Yes, sir.

EXHIBIT "A."

Witness makes a copy of said Schedule B of the property filed by the Louisville, New Albany and Chicago Railway Company for taxation in 1897, which copy is marked Exhibit "A" in red ink, is attached hereto and made a part of this deposition.

Q. I will ask you to look at the schedules in your office for the years, 1889, and succeeding years up to and including
264 the year 1897, and state what property in Francesville in the way of town lots was returned by the Louisville, New Albany and Chicago Railway Company for taxation during those years as shown by schedules on file in your office?

A. All I can say would be in regard to the copy.

Mr. Steis:

Q. Just what the return of the company shows?

A. Return of the company? They would all be the same exactly as my attached copies.

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana and state what your record shows for the year, 1896, by the schedule of property filed that year for taxation of the property in Francesville by that company?

A. In answering that question witness reads from schedule as follows:

"Schedule B. Railroad track. Belonging to or controlled by the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana April 1st, 1896. Township city and town. Salem township. Francesville, part section. Section- 4 and 9 township 29 range 4. Description. 3 lots (town) each 360 x 150 located on west side of Bill street between Lyman and Yellow streets." Under column marked "Value" "Depot." Under column "Value of stations and other improvements on right of way $300.00."

Q. I will ask if you will make an exact copy of this schedule of 1896, above mentioned, mark it Exhibit "B," and attach it to your depositien and make it a part thereof?

A. Yes sir.

Exhibit "B."

Witness makes a copy of said Schedule B of the property
265 for taxation by the Louisville, New Albany and Chicago Railway Company for the year, 1896, which copy is marked in red ink Exhibit "B," is attached hereto and made a part of this deposition.

Q. I will ask you to look at Schedule "B" of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana for the year 1895, and state what your record shows for the year 1895, by the schedule of property in Francesville filed by that company for taxation for that year?

A. In answer to question witness reads as follows from the schedule:

Schedule B. Railroad track. Belonging to or controlled by the Louisville New Albany and Chicago Railway Company Pulaski

county, Indiana April 1st, 1895. Township, city and town. Salem township. Francesville. Part of section. Sections 4 and 9 township 29 range 4. Description. 3 lots (town) each 360 x 150 located on west side of Bill street between Lyman and Yellow streets." Under column, "Value" "Depot." Under columns marked "Value of stations and other improvements on right of way." "$300.00."

Q. I will ask you if you will make an exact copy of Schedule B of 1895, above mentioned, mark it Exhibit "C" attach it to your deposition and make it a part thereof?

A. Yes, sir.

EXHIBIT "C."

Witness makes a copy of said Schedule B of the property filed for taxation by the Louisville, New Albany and Chicago Railway Company in 1895, which copy is marked in red ink "Exhibit" "C," attached hereto and made a part of this deposition.

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, and state what your record shows
266 for the year, 1894, in the schedule of property for that year in Francesville, filed by that company for taxation.

A. Witness reads in answer to question as follows from Schedule B of the property filed by that company in 1894 for taxation: "Schedule B. Railroad track. Belonging to or controlled by the Louisville, New Albany and Chicago Railway *Railway* Company in Pulaski county, Indiana, April 1st, 1894.

Township. City or town. Salem township. Francesville. Part of section. Section- 4 and 9 township 29 range 4. Description. 3 lots (town) each 360 x 150 located on west side of Bill street between Lyman and Yellow streets. Under column "Value." "Depot."

Under column marked. "Value of stations and other improvements on right of way." $300.00."

Q. I will ask you if you will make an exact copy of this Schedule B of the property filed for taxation in 1894, above mentioned mark it Exhibit "D," attach it to your deposition and make it a part thereof?

A. Yes, sir.

EXHIBIT "D."

Witness makes a copy of said Schedule B of the property filed by said company for taxation in the year 1894, which copy is marked in red ink "Exhibit "D," attached hereto and made a part of this deposition.

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, for the year 1893, and state what your rec-

ord shows for the year 1893, by the schedule of property for that year in Francesville filed by said company for taxation?

267 A. In answering the question the witness reads as follows from the schedule referred to:—

"Schedule B. Railroad track. Belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana April 1st. 1893. Township, city and town. Salem township. Francesville. Part section. Sections 4 and 9 township 29 range 4. Description. 3 lots (town) each 360 x 150 located on west side of Bill street between Lyman and Yellow streets."

Under column "Value of stations and other improvements on right of way. "Depot. $300.00."

Q. I will ask you if you will make an exact copy of Schedule B of the property returned for taxation by said company for the year 1893, mark it Exhibit "E," attach it to your deposition and make it a part thereof?

A. Yes, sir.

EXHIBIT "E."

Witness makes a copy of Schedule B of the property filed for taxation by said company for the year 1893, which copy is marked Exhibit "E" in red ink, attached to this deposition and made a part hereof.

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana and state what your record shows for the year 1892, by the schedule of property in Francesville filed for taxation that year by that company? (No answer.)

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, for the year, 1892, and state what

268 your record shows for the year 1892 by the schedule of property for that year in Francesville by that company?

A. In answer to the question the witness reads as follows from th-schedule referred to:—

"Schedule B. Railroad track. Belonging to or controlled by the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, April 1st, 1892. Township, city or town. Salem township Francesville. Part of section. Section- 4 and 9 township 29 range 4. Description. 3 lots (town) each 360 x 150 located on west side of Bill street between Lyman and Yellow streets." Under column marked "Value of stations and other improvements on right of way." "Depot. $300.00."

Q. I will ask you if you will make an exact copy of Schedule B, of the property returned for taxation by said company in 1892, attach it to your deposition and mark it Exhibit "F," and make it a part thereof?

A. Yes, sir.

EXHIBIT "F."

Witness makes a copy of said Schedule B of the property filed for taxation for the year 1892, by the Louisville, New Albany and Chicago Railway Company, which copy is marked in red ink Exhibit "F," attached hereto and made a part of this deposition.

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, for the year, 1891, and state what your record shows for that year by the schedule of property for the year 1891, in Francesville filed by that company?

A. Witness in answer to the question reads as follows:—

269 "Schedule B. Railroad track" belonging to or controlled by the Louisville, New Albany and Chicago Railway Company, April 1st, 1891. Township city or town. Salem township. Francesville. Part section. Section 4 and 9 township 29 range 4. Description. 3 lots each 360 x 150 located on west side of Bill street between Lyman and Yellow streets." Under column marked "Value of stations and other improvements on right of way" "Depot. $300.00."

Q. I will ask you if you will make an exact copy of the schedule above referred, to mark it Exhibit "G," attach it to your deposition and make it a part thereof?

A. Yes, sir.

EXHIBIT "G."

Witness makes a copy of Schedule B of the property filed for taxation by the Louisville, New Albany and Chicago Railway Company for the year, 1891, which copy is marked in red ink "Exhibit "G," attached hereto and made a part of this deposition.

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company for the year 1890, in Pulaski county, Indiana, and state what your record shows for the year 1890 by the schedule of property for that year in Francesville by that company?

A. Witness reads as follows from Schedule B. above referred to, in answer to the above question:—

"Schedule B. Railroad track. Belonging to or controlled by the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, April 1st, 1890. Township, city or town. Salem township. Francesville. Sections 4 and 9 township 29, range

270 4 west. Description. 3 town lots each 360 x 150 located on west side of Bill street, between Lyman and Yellow streets." Under column, "Value of stations and other improvements on right of way." "Depot" $300.00."

Q. I will ask you if you will make an exact copy of Schedule B of the property filed for taxation by said company for the year 1890,

mark it Exhibit "H" attach it to your deposition and make it a part thereof?

A. Yes, sir.

EXHIBIT "H."

Witness makes a copy of Schedule B of the property returned for taxation for the year 1890 by the Louisville, New Albany and Chicago Railway Company, which copy is marked in red ink "Exhibit "H," attached hereto and made a part of this deposition.

Q. I will ask you to look at Schedule B of the property belonging to the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, and state what your record shows for the year 1889, by the schedule of property in Francesville for that year, filed by that company for taxation?

A. Witness in answering the above question reads as follows from schedule referred to:—

"Schedule B. Railroad track. Belonging to or controlled by the Louisville, New Albany and Chicago Railway Company in Pulaski county, Indiana, April 1st, 1889. Township city or town. Salem township. Francesville. Sections 4 and 9 township 29, range 4 west. Description. 3 town lots each 360 x 150 located west of Bill street, between Lyman and Yellow streets. Under column. "Value."

"Depot." Under column, "Value of stations and other im-
271 provements on right of way." $300.00.

Q. I will ask you if you will make an exact copy of Schedule B of the property filed for taxation by said company for the year 1889, mark it Exhibit "I" attach it to your deposition and make it a part thereof?

A. Yes, sir.

EXHIBIT "I."

Witness makes a copy of schedule of property returned by the Louisville, New Albany and Chicago Railway Company for taxation for the year, 1889, which copy is marked Exhibit "I" in red ink, attached to and made a part of this deposition.

(Witness also attaches his affidavit to the copies above referred to and makes it a part thereof.)

Q. You may state whether or not these lots you have described as being returned by the said railway company for the year 1897, *and* were the same as returned by the said company for taxation for the year 1889, and succeeding years up to 1897, as shown by the schedules?

A. Yes.

Q. You may state whether or not the schedules for the years prior to 1889, are in such shape that you can get at them without a vast amount of trouble?

A. Well, I suppose they are here but I do not know it to be sure.

Q. They are not in this office are they?

A. No they are not in this office, they are in the vault below if they are here at all. I have never seen them.

Q. Never seen them?

A. No, sir.

272 Cross-examination by Mr. STEIS is here taken up as follows:

Q. You may state if the schedules you have been speaking of in your examination in chief are all the schedules you have—that is to say the schedules for the year 1889 and succeeding years up to 1897, inclusive,—within your knowledge?

A. I can answer, yes, I think.

Q. Sir?

A. Yes, I think it is.

Q. You are testifying now are you from your examination of the schedules are you?

A. Yes sir.

Q. And what you have testified about in your examination in chief as to what was shown by the return made by the railway company is as it is shown by the schedules themselves?

A. Yes, sir.

Q. And not from any other record?

A. No, sir.

Q. No other record?

A. No, sir.

Q. You may state, if you have any knowledge of any other schedules besides these you now have before you?

A. Of this kind?

Q. Yes, sir that kind?

A. No.

Q. And for what years are the schedules as made by the railway company that you now have before you?

A. For the years 1889 to 1897, inclusive.

I believe that is all.

273 Redirect-examination of witness is here resumed as follows:

Q. How long have you been auditor of Pulaski county?

A. Since November.

Q. Of last year?

A. Last year. November 25th.

Q. You may state whether or not you have belonging to your office a vault in which there are a lot of old papers somewhat mixed up and which you have never examined or investigated to see whether there were any other schedules there or not?

A. Yes, we have a vault of that kind.

Q. You may state whether or not you have ever looked into that vault to see whether or not there were other schedules in that vault?

A. I never did.

Q. State whether or not the papers in that vault are filed or indexed so you can readily find or get at them?

A. That is a question I cannot answer: they should be but it seems they *hain't*.

Q. That is what I was trying to get at. Your deputy told me they were not.

A. I don't know.

JAMES N. HAYWORTH, *Witness.*

STATE OF INDIANA, } ss:
Pulaski County, }

I, Sarah Decker a notary public within and for said county and State do hereby certify that the above named deponent was first duly sworn by me to testify to the truth, the whole truth and
274 nothing but the truth in the cause at issue; that his deposition was reduced to typewriting by me, a disinterested person; that the plaintiff was represented by its attorney, Mr. Kinnan, and the defendant *was* represented by their attorney, H. A. Steis, and Medary M. Hathaway being present on his own behalf; that said deposition was taken in the auditor's office of Pulaski county, Indiana on the 10th day of May, 1899, between the hours of 8 o'clock a. m. and six o'clock p. m. pursuant to the annexed notice.

I also certify that the above and foregoing is a full, true and complete copy of all evidence introduced during the taking of said deposition, including the oral evidence and the copies of exhibits made a part of the deposition by the witness and marked as Exhibits "A," "B," "C," "D," "E," "F," "G," "H," and "I"; and that said deponent read over the deposition before signing the same.

[SEAL.] SARAH DECKER,
Notary Public.

My commission expires July 31st, 1902.

Cost of Deposition.

Witness one day's fees	$1.50
H. N. Hayworth for copies of exhibits and testifying	2.75
For taking deposition at 10 cts. per 100 words	3.00
Swearing witness and certificate	.50
Total	$7.75

275 EXHIBIT "A."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1897.

Township, city or town.				
Salem township.....	Section 4.	Township 29	Range 4.
Francesville.....	" 9.	" "	" "

Description:

3 lots (town) each. 360 x 150 located on west side Bill street between Lyman and Yellow street-.

Value —. Depot.
Value of stations and other improvements on right of way. 300.00.

276 EXHIBIT "B."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1896.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	4/9	29	4

Description:

3 lots (town) each. 360 & 150 located on west side Bill street between Lyman and Yellow streets.

Value —. Depot.
Value of stations and other improvements on right of way. 300.00.

277 EXHIBIT "C."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1895.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	4/9	29	4

Description:

3 lots (town) each 360 x 150 located on west side Bill street between Lyman and Fellows Sts.

Value —. Depot.
Value of station and other improvements on right of way. $300.00.

278 EXHIBIT "D."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1894.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	4/9	29	4

Description:

3 lots (town) each 360 x 150 located on W. side Bill St. betwe en Lyman and Yellow streets.

Value —. Depot.
Value of station and other improvements on right of way. $300.00.

279 EXHIBIT "E."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1893.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	4/9	29	4

Description:

3 lots (town) each 360 x 150 located on W. side of Bill St. between Lyman and Fellow Sts.

Depot.
Value of station and other improvements on right of way $300.00.

280

EXHIBIT "F."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1892.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	4/9	29	4

Description:

3 lots (town) each 360 x 150 located on W. side of Bill street between Lyman and Fellow streets.

Depot.

Value of station and other improvements on right of way. $300.00.

281

EXHIBIT "G."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1891.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	4/9	29	4

Description:

3 town lots each 360 x 150 located on west side of Bill street between Lyman and Fellow streets.

Depot.

Value of station and other improvements on right of way. $300.00.

282

EXHIBIT "H."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1890.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	4/9	29	4

Description:

3 town lots each 360 x 150 located on west side of Bill St. between Lyman and Fellow streets.

Depot.

Value of station and other improvements on right of way. $300.00.

283 EXHIBIT "I."

Schedule Railroad Track

Belonging to or controlled by the Louisville, New Albany & Chicago Ry. Company in Pulaski county, Indiana, April 1st, 1889.

Township, city or town.	Section.	Township.	Range.
Salem township, Francesville.....	9/4	29	4

Description:

3 town lots each 360 x 150 located west side of Bill St. between Lyman and Felton St.

Value —. Depot.
Value of station and other improvements on right of way. $300.00.

284 STATE OF INDIANA, } ss:
County of Pulaski, }

I James N. Hayworth auditor of Pulaski county State of Indiana do hereby certify that the foregoing and attached statements are a true and complete copies of section "B" of the schedules of property as filed in my office by the Louisville New Albany and Chicago Railway Company for the years from 1889 up to 1897 as stated in said copies.

Witness my hand and official seal this 10th day of May 1899.
[SEAL.] JAMES N. HAYWORTH, *Auditor.*

285 (Endorsed on back:) Cause No. —. Chicago, Indianapolis & Louisville Ry. Co. *vs.* Patrick McGuire & Medary M. Hathaway. Deposition of James N. Hayworth auditor Pulaski county, Ind. Filed May 18, 1899. F. B. Humston, clerk. (Enclosed in envelope, addressed as follows:) Clerk of circuit court, White county, Indiana, Monticello, Indiana. Chicago, Indianapolis and Louisville Railway Company *vs.* Patrick McGuire and Medary M. Hathaway. Filed May 15, 1899. F. B. Humston, clerk.

286 *Samuel Petrie, Witness.*

SAMUEL PETRIE, a witness called on behalf of the plaintiff, after being first duly sworn, testified as follows, to-wit:

Examination in chief.

Questions by Judge FIELD, of counsel for the plaintiff:

Q. State your name to the court and jury?
A. Samuel Petrie.
Q. Where do you live?

A. Francesville, Pulaski county, Indiana.
Q. How long have you lived there?
A. I have lived there ever since August, 1865.
Q. If you hold any official position in the town of Francesville, you may state what it is?
A. I have held the town treasurership six terms.
Q. Are you still town treasurer?
A. I wasn't elected last term, but I haven't turned the books over yet.
Q. The other man hasn't qualified yet?
A. He has qualified but he has never receipted for the books yet.
Q. Have you the tax duplicates of the town of Francesville?
A. Yes sir.
Q. Turn to your tax duplicate of 1891, at page 26, and if you find any entry there of taxes upon the tax duplicate against the railway company, you may state the entry to the jury?

The defendants objected to the question, because this complaint is a declaration that the plaintiff is the owner in fee simple of this property, averring a legal title, which means a title by proper deed, proper conveyances; the only title they can claim under this
287 complaint is that kind of a title; that is no way to prove title, proving a man has paid taxes; that does not tend to prove a legal title; they cannot come into court and rely upon a legal title, averring they are owners in fee simple and then bolster it up by proving that they paid taxes and have been in possession; that is no evidence tending to establish a title in fee simple. They must stand upon the first paragraph of complaint, that they are the owners in fee of this property by an indefeasible title by proper and legal conveyances from the owners of the land and they can not bolster it up by showing an equitable title; they cannot show an easement; they can not bolster it up by showing they paid taxes; the railroad company by possession, adverse possession, can only acquire an easement; the railroad company can not acquire fee by any other way except by a deed.

The court sustained the objection, to which ruling of the court, the plaintiff at the time, excepted.

Plaintiff offered to read in evidence from the tax duplicate of the town of Francesville, at page 26, the following entries:

"Louisville, New Albany and Chicago R. R. main track, 8550. Louisville, New Albany and Chicago R. R. side track, 1535. Louisville, New Albany and Chicago R. R. rolling stock, 1550. Louisville, New Albany and Chicago R. R. improvements, 390. Louisville, New Albany and Chicago R. R. repairing material, $125. One acre and one-half in section 4, town. 29, range 4 $150. Louisville, New Albany and Chicago R. R. one and one-half acre in section 9, town. 29, range 4 west," $150. The record shows $80.34 was paid in full under protest.

The court still sustained defendants' objection, and refused
288 to allow plaintiff to make such proof, to which ruling of the court, the plaintiff at the time excepted.

Q. Mr. Petrie, the lots that stand taxed there, two lots as an acre and a half each, are the depot grounds in Francesville?
A. Yes, sir, what is called the depot grounds.

Defendants objected to the question and moved the court to strike out the answer thereto, because it is a conclusion.
The court sustained the objection and the motion to strike out the answer, to which ruling of the court, the plaintiff, at the time excepted.

Q. What lots are those that are designated as acre and a half lots on which assessment is made?

Defendants objected to the question, because that does not call for any explanation.
The court sustained the objection, to which ruling of the court, the plaintiff, at the time, excepted, and plaintiff offered to show in answer to the question that the lots appearing on the tax duplicate at that page 26 were the lots within the boundaries, marked depot grounds in the town of Francesville.
The court still sustained the defendants' objection, and refused to allow plaintiff to make such proof, to which ruling of the court, the plaintiff, at the time, excepted.

Q. You may state, Mr. Petrie, whether the same form of entry appears upon your tax duplicate with reference to the same property from the year 1891, to 1898, inclusive and for each year thereof?

Defendants objected to the question, because as stated before, it does not tend to prove the averments of the complaint.
The court sustained the objection, to which ruling of the
289 court, the plaintiff, at the time excepted, and the plaintiff offered to show that the tax duplicate in the hands of the witness shows the entry of this property embraced in the preceding entry for each year during said period of time.
The court still sustained the defendants' objection, and refused to allow plaintiff to make such proof, to which ruling of the court, the plaintiff, at the time excepted.

Q. State whether or not the tax duplicate shows the payment of the taxes during those years?

Defendants objected to the question.
The court sustained the objection, to which ruling of the court, the plaintiff, at the time, excepted, and the plaintiff offered to show, in answer to the question, that the Louisville, New Albany and Chicago Railway Company paid taxes for each year on the property mentioned, from 1891, to 1898 inclusive.

The court still sustained defendants' objection and refused to allow plaintiff to make such proof, to which ruling of the court, the plaintiff, at the time, excepted.

Q. Mr. Petrie, you may turn to your tax duplicates at page 127, with reference to an assessment for street improvement in the town of Francesville; do you know where those streets are that were gravelled and improved?

A. Yes, sir.

Q. Where are they with reference to the ground up there marked depot grounds at Francesville?

A. On the east on Bill street, on the east of the grounds, and on Montgomery street; it is in section 4, that street is.

Q. The street on the east of the grounds marked depot grounds is a north and south street, or east and west street?

290 Defendants objected to the question.

The court overruled the objection, to which ruling of the court, the defendants at the time, excepted.

A. Bill street runs north and south.

Q. For how many feet?

A. It runs three blocks north and south.

Q. The whole length of the open space where the depot building is?

A. Yes sir, the whole length of that.

Q. Look at page 127 of your tax duplicate and say how much on account of that improvement appears to be assessed against the land adjoining, in the name of the Louisville, New Albany and Chicago Railway Company?

A. Sixteen hundred and forty-one dollars.

Defendants objected to the question and moved the court to strike out the answer.

The court sustained the objection, to which ruling of the court, the plaintiff, at the time, excepted, and plaintiff offered to show in answer to the question that the land known as depot grounds in the town of Francesville, was assessed by the town authorities in the sum of sixteen hundred and forty-one dollars, for gravel street improvement upon streets running north and south on the east side of the depot grounds, and one street running east and west through the depot grounds. The court still sustained defendants' objection, and refused to allow plaintiff to make such proof, to which ruling of the court, the plaintiff at the time, excepted.

Q. Mr. Petrie I will ask you to refer to that record and state whether any portion of that tax appears to have been paid by the Louisville, New Albany and Chicago Railway Company for the year 1896, and if so, how much?

291 Defendants objected to the question, because it does not tend to prove the averments of the complaint.

The court sustained the objection, to which ruling of the court, the plaintiff, at the time, excepted; and plaintiff offered to prove in answer to the question, that the railway company paid for street improvements on lands adjoining depot grounds, and on the street running through the same, the sum of two hundred seventy dollars and seventy-five cents.

The court still sustained the defendants' objection, and refused to allow the plaintiff to make such proof, to which ruling of the court, the plaintiff, at the time, excepted.

Q. Mr. Petrie turn to your tax duplicate on page 16, and you may state to the jury whether the record shows that the Louisville, New Albany and Chicago Railway Company paid in the year 1897, on account of the street improvements, gravelling etc., of the streets hereinbefore referred to, the sum of two hundred and fifty-two dollars and seventy-two cents on account of that land?

A. Defendants objected to that question, because it is not warranted by the complaint.

The court sustained the objection, to which ruling of the court, the plaintiff at the time, excepted; and plaintiff offered to prove in answer to the question that the railway company referred to paid in said year for street improvements assessed against the depot grounds in Francesville, the sum of two hundred fifty-two dollars and seventy-two cents.

The court still sustained the defendants' objection, and refused to allow plaintiff to make such proof, to which ruling of the court, the plaintiff, at the time, excepted.

292 Q. Mr. Petrie turn to your record on page 32, and state to the jury whether on the tax duplicate that you have before you of the town of Francesville, there appears on that page an assessment against the Louisville, New Albany and Chicago Railway Company, for street improvements in the town of Francesville, on the street running lengthwise of the depot ground and one crossing the depot ground?

Defendants objected to the question, because it is not warranted by the complaint.

The court sustained the objection, to which ruling of the court, the plaintiff, at the time, excepted; and plaintiff offered to prove in answer to the question that there is such an assessment noted.

The court still sustained defendants' objection, and refused to allow the plaintiff to make such proof, to which ruling of the court, the plaintiff, at the time, excepted.

Q. How much does your record show on the page referred to, as paid in the year, on account of street improvements?

Defendants objected to the question, because it is not warranted by the complaint.

The court sustained the objection, to which ruling of the court, the plaintiff, at the time, excepted; and plaintiff offered to prove in answer to the question, that the amount paid was thirty-nine dollars and thirty-eight cents.

The court still sustained defendants' objection, and refused to allow plaintiff to make such proof, to which ruling of the court, the plaintiff, at the time, excepted.

Q. In 1865, was there a depot building constructed on this land?

Defendants objected to the question.

293 The court sustained the objection, to which ruling of the court, the plaintiff, at the time excepted; and plaintiff offered to show that the depot was constructed at that time on this land in controversy.

Defendants withdrew their objection.

By Judge WINFIELD: We in our answer make no claims to the north side of these lots.

The question was withdrawn.

By Judge FIELD:

Q. When you went there in 1865, was there a depot building on the line of the Louisville, New Albany, and Chicago railway at Francesville?

A. Yes sir.

Q. What was its appearance as to being a new building, or old building?

A. It was a tolerably old building.

Q. How long, from its appearance, would you say it had stood at that place?

A. Perhaps ten or twelve years.

Q. Was there a railroad track running north and south through the lands near where the depot building stood?

A. Yes sir.

Q. That has been maintained there ever since?

A. Yes sir.

Q. Has the depot building been maintained there?

A. It burned down in 1878, the old depot.

Q. Was a new one constructed?

A. Yes sir, a new one was constructed since.

Q. Were there any stock pens there when you went there in 1865?

A. Yes sir.

Q. What was their appearance as to having been constructed long prior, or about that time?

294 A. They had been constructed I presume some time before that.

Q. From appearances, how many years?

A. Perhaps eight or ten years, I expect from the look of them; I couldn't say exactly.

Q. How many buildings are there facing on this depot ground in the town of Francesville, on the east side of it?

Defendants objected to the question because it is immaterial.

Plaintiff offered to show in answer to this question that there is a row of buildings built up in the town facing on the depot plat.

By the COURT: Is the purpose to show adverse possession?

By Judge FIELD: I simply claim the public have built with reference to the plat as well as our rights.

The court overruled the objection, to which ruling of the court, the defendants, at the time, excepted.

(By the WITNESS:)

A. Commencing at the south part there is the Christian church; W. C. Haymond, and R. Brenneman, that is in block twenty-two on the east side; and then there is Mr. Hayworth and Mallon owns a half lot on block fourteen, lot seven, the west half of the lot; then J. R. Hayworth, the Emsing Gagen Company, and B. Hullinger, Dasiky & Petrie, Masonic lodge, John H. Culbo, S. Petrie, John Kopke, John H. Mallon, Hannah Byers, and A. G. Fisher.

It is admitted by the defendants that it is all built up, all along on Bill street facing the west.

Q. In front of these buildings that are lined on the east of Bill street, is the grounds in controversy?

A. Yes sir.

Q. How many of those buildings on the east side of Bill street were constructed when you went there in 1865?

295 A. There is very few of them there now.

Q. They have been replaced by others?

A. Yes sir, they have been replaced by others.

Q. Were there some buildings there in 1865, built on that land?

A. Yes sir, there is very few buildings that was constructed in 1865 that is there now; there is one, Dasiky and Petrie, is one building in there that was constructed before 1865, and the Hannah Byers building was constructed there when I came there.

Q. Part of this property is residence property and part business places, and a church?

A. Yes sir.

Q. Look at that picture and say if that represents the east side of the town of Francesville, or what is claimed to be depot ground? (Handing witness a photograph to examine.)

A. Yes sir, the west side is depot grounds here.

Q Do those improvements abut on what is claimed to be depot grounds?

A. Yes sir.

Plaintiff offered the photograph in evidence.

Defendants objected to the introduction in evidence of the photograph, because there is no showing when it was taken.

The court overruled the objection, to which ruling of the court, the defendants at the time, excepted; and the said photograph being then given in evidence and exhibited to the jury was the same as appears upon the following page of this transcript. (Identified by reporter as Exhibit L.)

Photograph.

(Here follows photograph marked page 295*a*.)

Exhibit L

Exhibit M.

296 Q. Mr. Petrie on the west side of what is claimed as the depot grounds, you may state whether or not there is a row of buildings on the west side to the length of what we claim is depot grounds?

Defendants objected to the question, because that is clear beyond the lands in controversy; it is across the railroad track on the west side, and the defendants are claiming no interest whatever in the lands there where the depot is and on the right of way.

By Judge FIELD: We want to show what has been done with reference to the investment of property.

The court overruled the objection, to which ruling of the court, the defendants, at the time, excepted.

A. Yes sir, there is.

Q. How many buildings on the west side fronting on what we claim the depot grounds in the town of Francesville?

A. Commencing at Lyman avenue is David Welsh and I believe Alpheus Hollinger owns a building; the widow Andrews owns a building, David Hazen next, Julia Conner next, and Mrs. Dodge; Samuel Petrie has a half lot there, and then Mrs. Dodge and Mrs. Hazen; then John J. Kopke, and Mrs. Dodge, J. V. Reese, and Mrs. Bledsoe and Harry Bledsoe and O. W. Calvert; that is all.

Q. Are those buildings that you speak of built substantially in line north and south, facing what we claim is the depot grounds?

A. Yes sir.

Photograph.

Q. Look at the picture that I hand you, and state whether that represents the west side of the improvements facing on what is claimed is depot grounds?

A. Yes sir.

297 Plaintiff offered the picture in evidence, and the said picture being given in evidence and exhibited to the jury was the same as appears upon the following page of this transcript. (Identified by the reporter as Exhibit M.)

(Here follows photograph marked page 297*a*.)

298 Cross-examination:

Questions by Judge WINFIELD, of counsel for the defendants:

Q. You went there in 1864?
A. August, 1865.
Q. Was it built up on the east line of Bill street facing the west when you went there?
A. Not all of it.
Q. There were houses there?
A. There was no warehouse there.
Q. On the east line of Bill street facing west was there buildings on that line in 1865?
A. There was some.
Q. Were they old buildings?
A. Yes sir, they were old buildings.
Q. How long do you suppose they had been there—as much as ten years?
A. Yes, sir, maybe longer than that.
Q. They had been there prior to 1862?
A. I expect they had.
Q. That line, the line of Bill street was marked there by those buildings as much as ten years before 1865?
A. Yes sir, I expect it was.
Q. How long was it on the west side?
A. About the same way?
Q. They were all old buildings?
A. Principally old buildings.
Q. Standing there yet?
A. Part of them are standing and part torn away.
Q. How long do you think they had been there in 1865, when you went there?
A. I couldn't say; they were pretty old buildings.
Q. Been there as much as ten years?
299 A. I expect they had.
Q. Long prior to '65?
A. Yes sir, I expect so.
Q. You have been asked what is along the east line of Bill street facing west; what is along the west line of Bill street facing east?
A. Mr. Prewett's grain office and the post office, and there is a lumber office, that is facing to the east.

Plaintiff objected to this evidence, because it is not cross examination.

Defendants offered to show by this witness on cross-examination that this ground is all built over on the west line of Bill street between that and the depot, with offices, post office, lumber yards, blacksmith shop, and grain buyers, elevators, and that no part of

this land in controversy is used by the railroad for railroad purposes.

The court still sustained the plaintiff's objection, and refused to allow the defendants to make such proof, to which ruling of the court, the defendants, at the time excepted.

300 *Evidence of Robert Field.*

ROBERT FIELD, a witness called on behalf of the plaintiff, after being first duly sworn, testified as follows, to-wit:

Examination in chief.

Questions by Judge FIELD, of counsel for the plaintiff:

Q. State your name to the court and jury?
A. Robert Field.
Q. Were you at Francesville last week one day to have some photographs taken?
A. Yes sir.
Q. Were you there when the party took them?
A. Yes sir.
Q. State where the instrument stood when he took this picture showing the property to the east?
A. The instrument stood at the south end of the depot grounds.
Q. What is called the depot grounds?
A. Yes sir, what is called the depot grounds—it stood just a little bit west of the road that runs—stood south of the road that runs east and west, and a little west of the road that runs north and south.
Q. Where did the instrument stand when the picture was taken showing the property to the west of the track?
A. It stood to the south end of what is called the depot grounds, and a little south of the street running east and west, and in the middle of the main track.

301 Cross examination.

Questions by Judge WINFIELD, of counsel for the defendants:

Q. Are you a son of Judge Field's?
A. Yes sir.
Q. Did you take the photographs yourself?
A. No sir.
Q. Who was the photographer or artist?
A. His name was Frank Grafton.
Q. Where does he live?
A. At Francesville.

Q. Do you know what kind of a camera he had?
A. No sir.
Q. You know you didn't get a very large view?
A. He had a good sized camera, but he took a long distance picture.
Q. He was off a long distance?
A. He was off a little ways, not very far from the first house here, but as it went down, the distance got longer.
Q. It got very dim and distant?
A. Yes sir.
Q. He didn't get a very good view of Bill street there?

Plaintiff objected to the question, because the picture shows for itself.

Q. This view here, (indicating on photograph) is away south of Montgomery street, that view where it shows lumber piled up is away south of Montgomery street, isn't it?
A. I don't know the names of the streets.
Q. Isn't it away south of the depot?
A. It is a little bit over a block south of the depot.
Q. Commencing at this point here (indicating on the photograph) looking where you stood, it was built up all along there on
302 the west line of Bill street, wasn't it, which is not disclosed in that photograph?

Plaintiff objected to the question, because it is not cross-examination of anything asked the witness in chief; he was simply asked where the instrument stood when the pictures were taken.

Defendants offered to show that that instrument was placed at a point just where it would show the east line of Bill street and wouldn't show the west side.

Q. Where you stood there at the time this instrument was set, you couldn't see the west line of Bill street at all could you, except the first house?
A. I don't know which Bill street is.
Q. It is the street which runs north and south; you couldn't see the west line of Bill street at all, could you, except that first house that cut off the view?

Plaintiff objected.

Q. You looking in the same direction the camera was, you couldn't see the west line of Bill street, could you?
A. No sir.

303 Plaintiff re-offered in evidence the plat heretofore offered, marked Exhibit A., with the quitclaim deed, made in February, 1896, in connection with it, the deed having already been introduced and read in evidence (marked Exhibit K.) and plaintiff offered to introduce it in supplement of that, the deed from Brooks to the company.

By the COURT: What is the purpose of it, Judge Field?

By Judge FIELD: The purpose is this, that the grantor in that deed, as Judge Winfield says,—it is true, and I have no doubt he will prove it as he did on the other trial—that Brooks, deceased, was the owner in fee simple of the property, and that instead of disputing the title, or the easement, he confirmed it by this deed, and the effect of the deed was to date back to the time the plat was filed and give to the true owner whatever title the plat itself would give; If Brooks was the owner, then of course he ratified that entire plat; it is not necessary for it to be made by the owner to be adopted by the owner.

Defendants objected to the introduction of the plat in evidence, for the reasons given, when the plat was first introduced or offered in evidence.

The court sustained the objection, and refused to allow the plat to be given in evidence and exhibited to the jury, to which ruling of the court, the plaintiff, at the time excepted. The plat so offered and refused by the court is marked Exhibit A., and appears at page — of this transcript.

Plaintiff here rested its case.

304 *Admission.*

It is admitted by the parties to this suit that the papers about to be offered are the papers in the case of Patrick McGuire against The Louisville, New Albany and Chicago Railway Company, in a suit commenced March 19th, 1895;

Defendants offered first, the amended complaint filed February 11th, 1896., (identified by the reporter as Exhibit N.,) and the said amended complaint being then read and given in evidence was in the words and figures following, to-wit:

EXHIBIT N.

Plaintiff's Evidence, Amended Compl.

THE STATE OF INDIANA, } ss:
White County, }

White Circuit Court, February Term, 1896.

PATRICK MCGUIRE
vs.
THE LOUISVILLE, NEW ALBANY & CHICAGO Railway Company. } Amended Complaint.

The plaintiff Patrick McGuire, complains of the defendant The Louisville, New Albany & Chicago Railway Company, and avers

that during the years 1891 and 1892 he was engaged in the business of buying for shipment to Chicago and other points, hay, straw, and other farm products at the station of Marlborough, in Jasper county, Indiana; that for the purpose of facilitating the business of buying and shipping such products, the plaintiff purchased, built and maintained hay presses and wagons, for the purpose of handling such products, all at a great expense to himself, to-wit: in the sum
305 of one thousand dollars.

Plaintiff further avers that the defendant, The Louisville New Albany and Chicago Railway Company, was, during the year 1891, and for ten years prior thereto, and ever since has been a corporation organized under the laws of the State of Indiana, and engaged in the business of a common carrier and shipper of straw, hay, grain, and other kinds of farm products, and also of all kinds of movable property from and between the station of Marlborough in Jasper county, Indiana, to Chicago and other points in the State of Illinois and to Louisville and other points in the State of Kentucky; to Cincinnati and Columbus and other points in the State of Ohio; to Pittsburg, Philadelphia, Lansdale, New Castle and other points in the State of Pennsylvania, to New York city, Cobleskill and other points in the State of New York; to Baltimore and other points in the State of Maryland, and to other cities and towns in the eastern and central parts of the United States, with its general freight agency at the city of Chicago, in the State of Illinois; that its main line extends from Chicago, Illinois, through the State of Illinois and through the State of Indiana, and to Louisville, Kentucky, and from Chicago, Illinois to Indianapolis, Indiana.

That Marlborough is a station upon the defendant's line of road in Jasper county, Indiana; that during the year 1892 and for many years prior thereto, the defendant, The Louisville, New Albany, & Chicago Railway Company, scheduled its freight rates without division into parts or interest to all of the cities and towns, aforesaid, and also to all the Atlantic sea-board cities, and also to all intervening towns and cities, intermediate between said station of Marl-
306 borough, and issued shipping bills without change of cars from said station of Marlborough to Cincinnati, Columbus, Lansdale, New Castle, Philadelphia, Pittsburg, Pennsylvania, and other points herein named. That the defendant, the railway company, during all said years and for many years prior thereto held itself out as a common carrier and shipper of hay, straw, grain and other farm products from plaintiff's place of business at Marlborough aforesaid to each and every one of the towns and cities aforesaid, and to intermediate towns and cities; that the defendant, the railway company, during all of said time advertised for freight business and continuously operated the sole and only line of railway over which surplus farm products in the vicinity of the station of Marlborough, as aforesaid, could be transported to market continuously during the year of 1891, and for many years prior thereto, and ever since; that the said defendant, railway company, during all of said

time owned and operated the only line of railway from said station of Marlborough directly to the cities of Chicago, Cincinnati and other towns and cities aforesaid, and in fact controlled such an interest in and held such shipping contracts with other railways that no re-shipment or re-billing of freight was required between said station and the cities and towns aforesaid, or the station between said cities and towns of said station of Marlborough, and during all said period of time held itself out as a common carrier of freight from said station of Marlborough, to all of said points, offering to enter into contracts with shippers to ship the aforesaid farm products upon certain schedule rates, without any change of cars whatever.

Plaintiff further avers that he was, during the years 1891,
307 and 1892, engaged in the general business of buying hay and straw of the farmers and other persons having the same for sale, at and in the vicinity of the station of Marlborough, Jasper county, Indiana, and shipped the same for sale in the markets of the cities and towns aforesaid. That he was induced to enter into said business and provided means for handling hay and other farm products at said station of Marlborough on the representation, assurances and offer of the defendant, railway company, its officers and agents, that it, the defendant railway company, was a common carrier of such merchandise, and would with promptness and diligence transport such hay and farm products in suitable cars to the cities and towns aforesaid, and was willing to enter into contracts for the shipment of the same to points aforesaid, and in the manner aforesaid. That the defendant, railway company, held itself out to the plaintiff as a common carrier for hire on a continuous line from plaintiff's said line of business and shipping points to the markets at the cities and towns aforesaid, by a continuous line of transit, and it was and became the duty of the defendant railway company, to furnish this plaintiff at said station of Marlborough, suitable cars upon demand to ship and tender such hay and straw so purchased by him for the purpose aforesaid for shipment to the towns and cities aforesaid; that the plaintiff, relying on the conduct, assurance and representations of the defendant railway company and his rights and privileges to have said hay and farm products transferred over and along the line of said defendant's railway company, railroad and connecting lines purchased during the month of October, 1892, a large quantity of hay, to-wit:—872 81/100 tons, at and in the vicinity of the station of Marlborough
308 and tendered the same to the defendant at the station of Marlborough aforesaid, for shipment to the cities of Chicago, Pittsburg, New Castle, Pennsylvania, Lansdale, Pennsylvania, Cobleskill, New York city, N. Y., Cincinnati, Ohio, and other cities and towns aforesaid, and demanded suitable cars to ship the same; and this plaintiff further avers that at the time of said tender of shipment and demand of cars he was ready and willing and able to pay the freight thereon, but the defendant did not require pre-pay-

ment of freight, but was accustomed to and did ship without prepayment of freight and collected the same from the consignees.

This plaintiff avers that the defendant, in disregard of its duty, in that respect, failed, neglected and refused to furnish cars as requested; that it was the duty of the defendant, railway company, upon such demand for cars, and tender of shipment to furnish the plaintiff with cars within a reasonable time, but that the said defendant failed, refused and neglected to furnish cars within a reasonable time; that by reason of the failure, neglect and refusal of the defendant to furnish cars, as aforesaid, 350 tons of hay which this plaintiff had hauled to the track of the defendant and tendered at the usual place of receiving freight for shipment, lay for a long time, to-wit:—40 days, exposed to the weather, defendant refusing, neglecting and failing to furnish the plaintiff with cars to ship the same, although requested to do so by the plaintiff and cars demanded, and by reason of said neglect, failure and refusal to furnish cars and by reason of the fact that said hay was thus exposed to the weather, it became damaged and lost and entirely destroyed without the fault of this plaintiff, he in nowise contributing in any way thereto, but said hay was lost and destroyed solely through the fault, negligence and wrongful conduct of defendant, as
309 aforesaid; by reason of its failure, neglect and refusal to furnish cars; that said hay thus lost and destroyed was of the value of $3000, which sum is wholly unpaid, principal and interest; that about the month of January, 1893, of said 872 tons of hay thus purchased plaintiff tendered 40 tons of said hay to the defendant for shipment and demanded suitable cars therefor to ship the same to the city of Chicago, State of Illinois; that the defendant after long delay, to-wit:—30 days, *frunsihed* the plaintiff his cars to ship said hay to said city of Chicago, but, without the knowledge of the plaintiff, said cars were leaky and by reason thereof rain and melted snow got in and upon said hay before the same was delivered in the city of Chicago and that of the amount thus shipped to Chicago some was damaged and became worthless to the amount of $29.11; that said loss was without the fault of this plaintiff; that of said 872 tons of hay the plaintiff tendered two car loads to the defendant for shipment to Cobleskill, New York; that the defendant furnished this plaintiff with two cars to ship the same and received the freight and billed the same through to the said Cobleskill without change of cars but that without the knowledge of the plaintiff and without any fault upon his part, said cars were leaky and unfit to ship hay in and by reason thereof a portion of said hay became damaged to the amount of $30.88; that said shipment was about January, 1893; that said damages were wholly unpaid;

This plaintiff avers that of said 872 tons thus purchased plaintiff tendered a car load of nine tons to the defendant for shipment to the city of Philadelphia; that the defendant furnished a car and received said hay and billed the same to the city of Philadel-
310 phia and shipped the same, but without the fault or knowledge of the plaintiff, said car was old and leaky, thereby rain

and melted snow got through, in and upon said hay, and destroyed a portion to the amount and value of $29.66; that said shipment was along about January 1893.

This plaintiff further avers that of said 872 tons of hay, he tendered along in April, 1893, 27 tons for shipment to Central Bridge, New York; that the said defendant furnished plaintiff with cars for that purpose and received said hay aboard said cars and billed the same through to the said Central Bridge, New York, without change of cars; that without the knowledge or fault of the plaintiff, said cars were old and leaky and by reason thereof, rain and melted snow got in and upon said hay and destroyed a portion thereof to the amount and value of $76.39.

This plaintiff further alleges that he had tendered said 872 tons for shipment and demanded cars; that the defendant refused and neglected to furnish cars for a long period of time, to-wit: 60 days, and then furnished the plaintiff with 5 cars for shipment of 50 tons of hay, to the city of Philadelphia, and defendant received the same and billed the same through to the city of Philadelphia, but by reason of lying exposed at the defendant's station waiting for cars, said hay had become wet inside without the knowledge of the plaintiff and by reason of old and leaky cars furnished by the defendant rain and melted snow had got through and in and upon said hay whereby it became heated and entirely destroyed, which was of the value of $76.39; that said hay became wet and destroyed without the fault and knowledge of this plaintiff.

This plaintiff further avers that after he had tendered said hay for shipment and demanded cars, the defendant failed and neg-
311 lected for a long period of time to furnish cars, to-wit: for a period of 60 days; that between the time the plaintiff should have furnished cars to the time it did furnish cars the price of hay declined in the market $1.50 per ton and this plaintiff was compelled to sell and did sell said hay upon said declining market, losing thereby $1.50 per ton, to his damage in all $465.00, all without the fault or negligence of the plaintiff; that the market price of hay at the time the plaintiff demanded said cars and within a reasonable time thereafter was $7.50, when there was a decline of $1.50 as aforesaid; that said loss accrued entirely without the fault and negligence of this plaintiff, but through the fault and miscarriage, and neglect and refusal of defendant, as aforesaid, to furnish this plaintiff with cars within a reasonable time after such demand.

That of said 872 tons of hay, the plaintiff tendered for shipment and demanded cars to the city of Chicago, Illinois 10 tons of hay; that the said defendant, on the 11th day of December, 1892, furnished the plaintiff with a car and received said tons of hay and billed the same to the city of Chicago; that the same arrived in the city of Chicago on the 13th day of December, 1892; that defendant failed and neglected to put said car upon a side track in the city of Chicago where the same could be unloaded for a long period of time, to-wit: until January 24th, 1893, and by reason of said delay said

10 tons of hay became damaged and entirely worthless; that the same was of the value of $75.00, all of which occurred through the carelessness, negligence and fault of the defendant and without any fault whatever upon the part of the plaintiff.

This plaintiff further aver- that after he had tendered said
312 872 tons of hay for shipment and demanded cars, as aforesaid, the defendant failed and neglected and refused for a long period of time, to-wit: 90 days, to furnish cars and said hay was suffered and permitted to lie at the station of Marlborough, as aforesaid, along the track of defendant; that this plaintiff was compelled to and did employ a man to watch and take care of said property, to keep the same from being destroyed by fire and to protect the same from the weather, for a period of ninety days, for which he was compelled to pay and did pay a sum of $100.00 and this plaintiff was compelled to re-handle said hay, sort it, separating the damaged portion from the good at an expense of $25.00, all of which damages, to-wit: $125.00, was caused by and solely through the fault and neglect and refusal to furnish this plaintiff with cars, as aforesaid, and without any fault and neglect upon the part of plaintiff, to the plaintiff's damage in the sum of $125.00; that by reason of aforesaid acts of defendant, this plaintiff has been damaged in the sum of $4000, which are due and unpaid.

Wherefore, the plaintiff demands judgment against the defendant in the sum of four thousand dollars, and for all other, proper relief.

CHAS. C. SPENCER,
M. WINFIELD,
Att'ys for Pl'ff.

(Endorsed on back:) No. 26. State of Indiana, White county. White circuit court, February term, 1896. Patrick McGuire
313 *vs.* Louisville, New Albany & Chicago Railway Company. Amended complaint. Filed Feb. 11, 1896, F. B. Humston clerk. Charles C. Spencer, M. Winfield, att'ys for pl'ff.

Answer in McGuire v. L., N. A. & C.

The answer of the defendant, The Louisville, New Albany and Chicago Railway Company, the paper not being found among the files, it is admitted by the plaintiff in this case that The Louisville, New Albany and Chicago Railway Company appeared and filed an answer in general denial to the amended complaint.

314 (It is admitted that the Order Book No. 41 in the hands of counsel, is an order book of the White circuit court on file in the office of the clerk of the said court.)

Defendants offered in evidence Order Book No. 41, at page- 289 and 290, and the said pages of said order book being then read and given in evidence, were in the words and figures following, to-wit:

PATRICK MCGUIRE
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RY. CO. } 26.

Comes the plaintiff by C. C. Spencer and M. Winfield, his attorneys; comes also the defendant by W. S. Kinnan and Sellers and Uhl its attorneys; the defendant files separate demurrers to the second and third paragraphs of plaintiff's complaint, in these words to-wit: (insert) which demurrers the court overrules, to which ruling of the court, the defendant excepts; the defendant now files its answer to the second and third paragraphs of plaintiff's complaint in these words, to-wit (insert)

Whereupon, the issues being joined between the parties, by agreement of parties this cause is now submitted to the court for trial without the intervention of a jury.

The defendant requests that the court finds specially the facts and conclusions of law therein.

The court having heard the evidence now takes this cause under advisement until some future day of the term.

September Term, 1896, 15th Day, Sept. 23rd, 1896.

315 Defendants offered in evidence Order Book 41 of the White circuit court, at page 294 to 309 inclusive, and the said pages of the said order book being then read and given in evidence were in the words and figures following, to-wit:

September Term, 1896, 16th Day, Sept. 24th, 1896.

PATRICK MCGUIRE
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY. } 26. Def't, $2,416.33, and Costs. Int., 6%. Without Relief.

Come again the parties by counsel, and the court now files his special finding of facts and conclusions of law thereon as follows, to-wit:

Special Finding.

"STATE OF INDIANA, } ss:
White County, }

White Circuit Court, September Term, 1896.

PATRICK MCGUIRE
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

Special finding.

The court at the request of the defendant made at the proper time, makes the following special finding of facts, with its conclusions of law thereon.

1st. During the years of 1892 and 1893, and for several years prior thereto, the defendant, The Louisville, New Albany and Chicago Railway Company was a corporation organized under the laws of the State of Indiana, and was engaged in the business of a common carrier, and shipped straw hay and other kinds of farm pro-
316 ducts, and during all that period of time had a station along its line of railroad called Marlboro, Jasper county, Indiana: and the said defendant was a common carrier of freight, and carried all kinds of farm products from the said station of Marlboro to the city of Chicago, and from points in the State of Illinois, and to Louisville and other points in the State of Kentucky, and to Columbus and other points in the State of Ohio, and to Philadelphia, Lansdale, Newcastle and other points in the State of Pennsylvania, and to Cobleskill, New York city and other points in the State of New York; and it had its general freight office in the city of Chicago and the State of Illinois.

2nd. The main line of defendant's railroad during the years of 1892 and 1893, and for several years prior thereto, extended from the city of Chicago, Illinois, through the State of Illinois, and through the State of Indiana, to Louisville, Kentucky, and from Chicago, Illinois, to the city of Indianapolis, Indiana, and the station of Marlboro, Jasper county, Indiana, was a station for the shipment of freight consisting of all kinds of farm products.

3rd. The defendant during the years of 1892 and 1893, and for several years prior thereto, scheduled its freight rates without division into parts or interest to all the cities and towns named in special finding, and during that same period of time held itself out as a common carrier and shipper of hay, grain, and other farm products from the station of Marlboro to the points named in the finding, during all that time and advertised for freight business from said station of Marlboro to said points.

4th. The defendant during said years of 1892 and 1893 and for several years prior thereto, operated the sole and only line of
317 railway over which surplus farm products from the vicinity and station of Marlboro could be transported to market, and had such arrangements with connecting lines that no re-shipments, or re-billing of freight was required from the station of Marlboro, Jasper county, Indiana, to the cities of Chicago, Pittsburg, Lansdale, Philadelphia, Cobleskill and Central Bridge, and the defendant offered to enter into contracts with shippers to ship hay, and other farm products, from said station of Marlboro to said points upon certain scheduled rates without any change of cars, and at said period of time the plaintiff had knowledge that the defendant was thus holding itself out as a common carrier of hay and other farm products, from the said station of Marlboro and to points named, and relying upon said fact, engaged in the business of buying hay for shipment to the points named from the station of Marlboro, Jasper county, Indiana; and prepared himself with hay presses at or near the station of Marlboro, for the purpose of purchasing hay for shipment upon the defendant's road during the year of 1892, of which fact the defendant had knowledge that the plaintiff was thus induced to engage in the business of shipping hay.

5th. The plaintiff during the month of October, 1892, purchased in the vicinity of the station of Marlboro from farmers 872.81 tons of hay for shipment on the defendant's railroad from the station of Marlboro to Chicago in the State of Illinois, Pittsburg, Newcastle, Lansdale, Philadelphia, in the State of Pennsylvania, and Cobleskill and Central Bridge in the State of New York, and on the Atlantic sea-board, and during the fall of 1892, and the winter of 1893, used his hay presses for that purpose and pressed the hay thus purchased and had it hauled to the station of Marlboro
318 for shipment on the defendant's railroad, and delivered and tendered said 872.81 tons of hay to defendant at the station of Marlboro for shipment to the cities of Peoria, Chicago, in the State of Illinois, Pittsburg, Newcastle, Lansdale and Philadelphia in the State of Pennsylvania, and Cobleskill, Central Bridge in the State of New York, and Cincinnati in the State of Ohio, and the said hay at the time the same was delivered and tendered to the defendant for shipment was in good condition, and the plaintiff at the time of said delivery and tender demanded of the defendant cars for shipping the same. That such demands for cars were made daily during the months of December, 1892, and January, February and March 1893. That the defendant failed and refused to furnish the plaintiff with cars. The time such cars were demanded such hay was piled up near the tract of the defendant at the station of Marlboro at the places pointed out by the defendant's agent.

At that place the defendant had no storehouses or hay barns, in which to store the hay while waiting for shipment, and the plaintiff had no storehouse or barns at the station of Marlboro, in which to store hay thus delivered and tendered for shipment while waiting

for shipment, which fact was well known to the defendant, that while the hay was thus lying at the defendant's station awaiting shipment, and after it had been delivered by the plaintiff; the plaintiff to protect said hay from weather caused the same to be covered with canvass, which was the usual and only way of protecting the same against the weather, that this was the only means the plaintiff could use to protect said hay from the weather.

6th. The defendant upon demand for cars could have reasonably furnished cars within two days, to ship the hay as fast as
319 delivered and tendered by the plaintiff; that had the defendant furnished the cars within two days from the time they were demanded by the plaintiff, all of said hay could have been shipped to the points named, without the same in any manner being affected by exposure to the weather or from other cause.

7th. Of the 872.81 tons of hay herein found to have been delivered and tendered to the defendant for shipment, 600 tons hay at the station of Marlboro exposed to the weather after the same had been delivered and ready for shipment and the plaintiff had demanded cars to ship the same from 30 to 60 days but the defendant did not furnish or offer to furnish the plaintiff with cars to ship the same.

8th. Of the 600 tons herein found to have been delayed, after delivery and tender to the defendant for shipment for from 30 to 60 days by reason of the failure of the defendant to furnish cars, 242 tons of this hay became wet and by reason of rains and snows was destroyed and rendered valueless. The plaintiff during this time employed men to watch this hay, to keep the same covered with canvass, to protect the same from snows and rains. The defendant knew during all of said period of time the said hay was lying at the station of Marlboro and had been delivered and tendered for shipment, and that cars had been demanded. At the time the plaintiff demanded cars to ship said 600 tons of hay he notified the defendant that he wished suitable cars to ship said hay to the points hereinbefore named; that such hay became valueless and was destroyed by reason of its lying at the station of Marlboro exposed to the rains and snows; after the same had been delivered and tendered for shipment, and cars had been demanded. That there was no other reason for the destruction of said hay, than the failure and
320 neglect to furnish the plaintiff with cars upon the demand herein found. I further find that the plaintiff did not fail to use any efforts in his power to prevent said hay from being destroyed after the same had been delivered and tendered for shipment as aforesaid, and that the destruction of said hay was by reason of the failure and neglect of the defendant to furnish cars as herein found.

9th. I further find that there was no emergency calling for from the defendants an unusual amount of cars at the station of Marlboro or other station along its line, which disabled it to furnish the plaintiff with cars within a reasonable time after demand had been made,

and that the defendant had sufficient cars to ship the hay, grain and other farm products, from any station along its line within a reasonable time, after demand for cars, during the fall and winter of 1892 and the months of March and April, 1893.

10th. I further find, that when the plaintiff made his several demands for cars to ship said 600 tons of hay, the defendant promised to furnish the plaintiff with cars within a reasonable time.

11th. I further find that the plaintiff did not in any way contribute by any negligence of his to the loss of said hay.

12th. I further find that the said 242 tons of hay at the time the same was delivered and tendered for shipment was worth $1462.00.

13th. I find that the market value of said hay at the points, for which the plaintiff demanded cars to ship said hay at the time the demand was made, and the hay was delivered and tendered for shipment and within such time as said hay could reasonably
321 have been shipped, after deducting the costs of shipment or freight charges was, $1462.00.

14th. I further find that said 242 tons of hay was worth at the time it was delivered and tendered for shipment, and cars were demanded at the station of Marlboro $1462.00.

15th. The plaintiff at the time of delivery and tender of said hay for shipment, was ready and willing to pay the freight thereon, but it was the custom and rule of the company not to require pre-payment of freight, but the freight was paid by the consignee and charged up by him against the plaintiff which the plaintiff paid. These rules were well known to the plaintiff, and they were acted upon by him and the defendant.

16th. Of the 872.81 tons of hay tendered by the plaintiff to the defendant for shipment to the points named, 300 tons were detained at the station of Marlboro for a period of 60 days because of the failure and neglect of the defendant to furnish cars and while thus detained at the station the market price of the hay declined at the points of destination fifty cents per ton; and the defendant did not furnish the plaintiff with cars to ship said 300 tons of hay until after said decline in the market, and the plaintiff was compelled to and did ship said hay to the points of destination, and was compelled to and did sell the same upon said declining market, and thereby lost fifty cents per ton or $150.00.

17th. I further find that had the defendant furnished the plaintiff with cars when demanded, or within a reasonable time therefrom, to-wit: two days for shipping said 300 tons of hay, the same would have reached the point of destination before the decline in the market, but the loss to the plaintiff of said $150.00 was caused
322 wholly by the aforesaid failure and neglect of the defendant to furnish cars.

18th. After said hay was delivered and tendered to the defendant for shipment by the plaintiff, and while being detained at the station by reason of the failure of the defendant to furnish cars, the plaintiff was compelled to and did employ a watchman, or a man to

watch said hay and take care of the same, that the services of said man were worth $1.50 per day, which the plaintiff paid him for watching said hay, as it was exposed to the weather, and also exposed to fire by reason of passing engines; that he thus employed a man for 60 days and paid him therefor $90.00 and that the employment of said watchman was rendered necessary by reason of the aforesaid failure and neglect of the defendant to furnish cars to ship said hay, within a reasonable time after demand was made.

19th. I further find that on the 10th day of December, 1892, of the 872.81 tons herein found the plaintiff delivered and tendered to the defendant for shipment nine tons of hay to be shipped to G. S. Blakeslee & Co., Chicago, Illinois, and demanded a car for that purpose. I further find that on or about the 10th day of December, the defendant furnished the plaintiff with a car to ship said nine tons of hay, and the same was loaded aboard the car by the plaintiff on that day, and the same when loaded was in good condition, and was all prairie hay, that the defendant transported said car to the city of Chicago and it arrived there on the 13″ day of December, 1892, and was detained by the defendant at its yards, at Chicago until the 24″ day of January, 1893, before it was put upon the side-track for unloading, and when unloaded it was found that the hay had
323 become wet and damaged and entirely destroyed, and rendering it entirely valueless, that it was impossible for the plaintiff's consignee to unload said car until thus placed upon the side track, that the failure to put said car upon the side track for, unloading from the 13th day of December until the 24th day of January following, was by reason of the carelessness and negligence of the defendant or its employees, and was without any fault or negligence upon the part of the plaintiff; that had said car been put upon the side track for unloading within a reasonable time after it arrived in Chicago the said hay would have *it* arrived in good condition in the city of Chicago.

20th. I further find that the plaintiff was compelled to pay and did pay to the defendant the freight on the said nine tons of hay, at the rate of $1.20 per ton, that said hay was worth in the market in Chicago at the time it arrived there, and at the time it was unloaded, if it had arrived in good condition $8.50 per ton or in all, $76.50.

21st. I further find at the time of the shipment of said hay the defendant delivered to the plaintiff a bill of lading, in substance as follows:—

MARLBORO, IND., *Dec.* 10, 1892.

Received from Patrick Maguire the property described below, in apparent good order. Marked consigned and destined as indicated below which said Louisville, New Albany & Chicago Railway Company agrees to carry to said destination.

Description of articles:

Nine tons of hay

Consignees and destination:

G. S. Blakeslee & Co. Chicago, Ills.

324 And then and there entered into a contract with the plaintiff to ship said hay to Chicago and within a reasonable time, and in good order.

22nd. That by reason of said hay being damaged as herein found, the same became worthless and wholly without value, and the plaintiff received nothing therefor, and was lost to him.

Third paragraph.

I further find that the defendant entered into a contract in the fall — 1892, with the plaintiff, whereby it agreed to ship said 872.81 tons of hay on the following terms and conditions, to-wit: To Chicago at the rate of six cents per hundred pounds; to Cincinnati at the rate of ten cents per hundred pounds, to Pittsburg at the rate of fifteen cents per hundred pounds, to New York and points in the State of New York, at the rate of twenty-five cents per hundred pounds, to Peoria, Illinois at the rate of seven cents per hundred pounds.

23rd. I further find that the defendant furnished plaintiff with cars 76 cars of inferior size, which would not hold ten tons of hay, on the contrary they would average only nine tons of hay, that the plaintiff made objections to the defendant of the size of these cars, that he was informed by the agent of the defendant at Marlboro that they were the best cars he could get, that the defendant demanded and exacted of the consignees of the plaintiff, freight charges at the rate of ten tons per car, which the consignees were compelled to and did pay freight at the rate of ten tons per car, which consignees charged up to the plaintiff, and which the plaintiff was compelled to pay, and did pay thus and thereby the plaintiff was compelled to pay excessive freight as follows: On one car to Chicago
325 $1.20, 29 cars were shipped to Cincinnati, on which the plaintiff was thus compelled to pay and did pay for 29 tons extra at the rate of fifteen cents per ton amounting to $58.00, that he shipped 15 cars to Pittsburg, for which the defendant demanded and received pay as aforesaid at the rate of ten tons per car and the plaintiff was compelled as herein found to pay extra freight to the amount of 15 tons at the rate of $3.00 per ton, in all $45.00; of the seventy-six cars, thirteen were shipped to New York for which the defendant demanded and received and which the plaintiff was compelled to pay as herein found freight at the rate of ten tons per car, thus and thereby the plaintiff was compelled to pay, which was received by the defendant the thirteen tons of extra freight at the rate of $5.00 per ton, which would be $65.00; of the seventy-six cars sixteen were shipped to Peoria, Illinois, for which the defendant demanded and received, and this plaintiff was compelled to pay as herein found at the rate of ten tons per car, that the defendants thus received and the plaintiff compelled to pay excessive freight to the amount of sixteen tons at the rate of $1.40 per ton amounting in all, $22.40. That the defendant exacted from the plaintiff's con-

signees, above the contract price and received the same for freight, which the plaintiff was compelled to pay as herein found to the amount of $188.60.

24th. I further find that said payment of excessive freight by the plaintiff was not voluntary, and was paid as herein found.

25th. I further find that the defendant was not entitled to receive and demand such excessive freight.

Conclusions of Law upon the Foregoing Facts.

326 1st. I find the law to be as follows: The plaintiff is entitled to recover upon the first paragraph of his complaint the sum of $1702.00 *dollars* with interest thereon from the first day of June, 1893, amounting to $306.36 *dollars*, in all the sum of $2008.36 and judgment should be for the plaintiff for that amount.

2nd. I find that the plaintiff is entitled to recover from the defendant upon his second paragraph of complaint the amount of seventy-six dollars and fifty cents with interest thereon from the first day of January, 1893, amounting to $13.68 *dollars* in all $90.18 and judgment should be for plaintiff for amount.

3rd. I find that the plaintiff is entitled to recover from the defendant upon the third paragraph of his complaint the sum of one hundred and ninety-one dollars, with interest thereon from the first day of June, 1893, amounting to $36.38 *dollars* in all $227.98 *dollars* and judgment should be for plaintiff for that amount.

GEORGE BURSON,
Special Judge."

The defendant by counsel now excepts to each conclusion of law herein.

Upon his foregoing finding of facts and conclusions of law thereon, the court finds for the plaintiff; that there is due the plaintiff and from the defendant the sum of two thousand four hundred sixteen dollars and thirty three cents.

Judgment in McGuire v. L., N. A. & C.

It is therefore considered and adjudged by the court that the plaintiff recover of the defendant the said sum of two thousand four hundred and sixteen dollars thirty three cents, with interest at the rate of six per cent. per annum together with his costs made, paid out and expended.

327 The defendant by counsel now files its motion in these words, to-wit: (insert) for a new trial of this cause.

The court now overrules the motion of defendant for a new trial

hereof; to which ruling of the court the defendant excepts and the defendant is given 90 days in which to file bond in the sum of three thousand dollars; and to file its bill of exceptions herein.

(On the margin of page 295 of the Order Book entry just read, appears the following)

"Notice is hereby given that I intend to hold a lien and do hold a lien on this judgment for my services as attorney herein for the plaintiff to the amount of thirteen hundred ($1300.00) dollars.

(Signed) CHAS. C. SPENCER."

328 Defendants offered in evidence the execution issued to the sheriff of Pulaski county, and the return of the sheriff thereon. (Identified by the reporter as Exhibit O.)

Plaintiff objected to the introduction of the return of the sheriff and the execution upon the grounds that the description contained in the sheriff's return of the levy make upon the real estate is so indefinite and uncertain as to constitute no description whatever, and that the pretended levy made upon the pretended property described is a nullity.

The court overruled the objection, to which ruling of the court, the plaintiff, at the time excepted.

And the said execution and return of the sheriff being then read and given in evidence were in the words and figures following, to-wit:

EXHIBIT O.

STATE OF INDIANA, } *ss*:
White County, }

The State of Indiana to the sheriff of Pulaski county:

Whereas, Patrick Maguire, recovered judgment against The Louisville, New Albany and Chicago Railway Company—on the 24" day of September, 1896, in the White circuit court, for two thousand four hundred sixteen dollars and thirty three cents, and subject to redemption laws of 1861, became replevin bail on the — day of ——, 189–, upon which there is due two thousand four hundred sixteen dollars and thirty three cents principal, with six per cent. interest, and sixty eight dollars and sixty two cents costs accrued to this time.

You are therefore commanded to levy the said sums of money of the property of the defendant, The Louisville, New Albany
329 and Chicago Railway Company in your county subject to execution, and have the money at the clerk's office to satisfy said judgment, interest and cost, and return this writ within one hundred and eighty days, with your doings thereon.

Witness, the clerk of said court, and the seal thereof hereunto affixed, at my office this 16" day of October, 1897.

[SEAL.] F. B. HUMSTON, *Clerk*,
By —— ——, *Deputy*.

WINAMAC, INDIANA, *Oct. 18th*, 1897.

This writ of execution came to hand October 16th, 1897, and after a strict and careful search I found no personal property of the defendant within my bailiwick of any kind or nature on which to levy said execution and I then levied upon the following real estate as the property of the said defendant, in Pulaski county, Indiana, described as follows, to-wit: Commencing at the north west corner of lot 12 in block 9 in the town of Francesville, in Pulaski county, Indiana, thence west with the south line of Yellow street to the west line of Bill street to the place of beginning, thence west with the south line of Yellow street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago railroad, thence south with the east line of said right of way 190 feet, thence east, parallel with the south line of said Yellow street to the west line of Bill street, thence north with the west line of Bill street to Yellow street to the place of beginning.

Also commencing at the south west corner of lot 7 in block 9 in said town thence west to the west line of Bill street to the place of beginning, thence west with the north line of Montgomery
330 street to a point 5 feet east of the east line of the right of way of said rail road, thence north parallel with said right of way 66 feet to post, thence east parallel with the north line of Montgomery street to the west line of Bill street, thence south with the west line of Bill street to Montgomery street to the place of beginning.

Also commencing at the northwest corner of lot 12 in block 14, thence west with the south line of Montgomery street to the west line of Bill street to the place of beginning, thence west with the south line of Montgomery street to a point 30 feet east of the east line of the right of way of said railway company, thence south, parallel with the east line of said right of way to James street, thence east with the north line of James street to the west line of Bill street, thence north with the west line of Bill street to the south line of Montgomery street to the place of beginning.

Also commencing at a point at the northwest corner of lot 12 in block No. 22, thence west with the south line of James street to the west line of Bill street at the place of beginning, thence west with the south line of James street to the east line of the right of way of said railway thence south with the east line of said right of way to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street, thence north with the west line of Bill street to the south line of James street to the place of beginning, all of said land being in the town of Francesville, in Salem township, in Pulaski county, in the State of Indiana and immediately after making my said levy on said real estate I caused the same to be appraised by E. H. Applegate and J. A. Engle, both of whom are resident householders and freeholders of said town of Francesville of the township of Salem, county of Pulaski and
331 State of Indiana, the town, township, county and State within which said real estate is situated, which said appraisement of

said real estate was appraised in parcels, reduced in writing and is filed herewith as part of this, my return of said execution.

And on the 22nd day of October, 1897, in pursuance to the command of this execution I advertised the real estate herein described for sale at the court house door of Pulaski county, Indiana, on the 13th day of November, 1897 by publication in the Pulaski County Democrat, a weekly newspaper of general circulation printed and published in the town of Winamac, in said town and county and nearest to where said real estate is situated for more than three weeks successively, immediately before the day of sale and by posting up a printed notice thereof at the court house door of said county and by posting up like notices thereof at three public places in the town of Francesville, in the township of Salem, in said county, the township in which said real estate is situated, which was done more than twenty days immediately preceding the day of sale, a copy of said notice being hereunto attached and made a part of this return.

And on the day set for the sale of said real estate, to-wit: November 13th., 1897, between the hours of 10 o'clock a. m. and 4 o'clock p. m. at the court house door of said county, I first offered to the highest and best bidder, for cash in hand, the rents and profits of all that portion of said real estate of the following description, to-wit: Commencing at the northwest corner of lot 12 in block 9 in the town of Francesville, in Pulaski county, Indiana, thence west, parallel with Yellow street in said town, 50 feet to a point on the west line of Bill street at the place of beginning, thence west, parallel with the south line of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville,
332 New Albany and Chicago Railway Company, thence south with the east line of said right of way 190 ft. to a post, thence east, parallel with the south line of Yellow street 150 feet to the west line of Bill street thence north with the west side of Bill street, 190 feet to the place of beginning (which said described land I will hereinafter refer to in this return and designate it as "tract No. 1"), for a period not exceeding seven years, by the year, and receiving no bid therefor I did then and there offer to the highest and best bidder, for cash in hand, the rents and profits of all that portion of said real estate of the following description, to-wit—all that portion thereof, commencing at the south west corner of lot 7 in block 9 in said town, thence west with the north line of Montgomery street, to the west line of Bill street at the place of beginning thence west with the north line of said Montgomery street to a post at a point 5 feet east of the east line of the right of way of said rail way company, thence north, parallel with the east line of said right of way 66 feet, thence east parallel with the north line of said Montgomery street to the west line of said Bill street, thence south with the west line of Bill street to the place of beginning (which tract last above described I shall hereinafter refer to in this return and designate as tract No. 2), for a period not exceeding seven years, by the year,

and receiving no bid therefor I did then and there offer to the highest and best bidder, for cash in hand, the rents and profits of all that portion of said real estate of the following description, to-wit:—

Commencing at the north west corner of lot 12 in block 14 in said town, thence west with the south line of Montgomery street, to the west line of Bill street to a post at the place of beginning, thence west with the south line of Montgomery street to a point 30
333 feet east of the east line of the right of way of said railway company, thence south parallel with the east line of said right of way 360 feet to the north line of James street, thence east with the north line of James street to the west line of Bill street, thence north with the west line of Bill street to the place of beginning (which tract last above described I shall, in this return, hereinafter refer to and designate as "tract No. 3," for a period not exceeding seven years, by the year, and receiving no bid therefor I did then and there offer to the highest and best bidder, for cash, the rents and profits of all that portion of said real estate of the following description, to-wit:—

Commencing at the north west corner of lot 12 in block 22 in said town, thence west with the south line of James street to the west line of Bill street to the place of beginning, thence west with the south line of James street to the east line of the right of way of the said rail way company, thence south with the east line of said right of way to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street, thence north with the west line of Bill street to the south line of James street at the place of beginning, which tract of land last above described I shall, in this return, hereinafter refer to and designate as "tract No. 4," and receiving no bids therefor I did then and there offer the rents and profits of tracts Nos. one and two for a period not exceeding seven years, by the year, for cash in hand, to the highest and best bidder and receiving no bid therefor I then and there offered to the highest and best bidder for cash in hand the rents and profits of tracts Nos. 1–2 & 3 for a period not exceeding seven years, by the year and receiving no bid therefor I then and there offered to the highest and best bidder for cash in hand, the
334 rents and profits — tracts Nos. 1–2–3 & 4 for a period not exceeding seven years and receiving no bids therefor I then and there offered to the highest and best bidder for cash in hand the fee simple right of the defendant of, in and to tract No. 1 of said real estate and receiving no bid therefor I did then and there offer to the highest and best bidder for cash the fee simple right of the defendant of, in and to tracts Nos. 1 and 2 of said real estate and receiving no bid therefor I did then and there offer the fee simple right of the defendant of, in and to tracts Nos. 1–2 & 3 of said real estate and receiving no bid therefor I did then and there offer to the highest and best bidder for cash in hand the fee simple right of the defendant company in and to any two of said tracts and receiv-

ing no bid therefor I did then and there offer to the highest and best bidder for cash in hand the fee simple right of the defendant company of, in and to any three of said tracts and receiving no bid therefor I did then and there offer the fee simple right of the defendant company in and to tracts Nos. 1–2–3 & 4, being all of said described real estate and Medary M. Hathaway bid therefor the sum of two thousand dollars ($2,000) and that being the highest and best bid then and there offered and the same being more than two-thirds of the appraised value thereof the same was openly struck off and sold to said Medary M. Hathaway for the sum of two-thousand dollars ($2,000.00), there being present at and during all the time of said sale more than three competent bidders; and the said purchaser having paid over to me the amount so bid by him, I did then and there execute to him my certificate of purchase, bearing even date herewith.

I then paid over to the plaintiff, as per his receipt herewith and hereon eighteen hundred fifty one and 33/100 dollars. I paid over to the clerk of White county sixty nine and 87/100
335 dollars original costs and have retained fifty two and 80/100 dollars, my fees. Paid over to J. J. Gorrell, printer, twenty two dollars, his fees, as per his receipt hereon. Paid to E. H. Applegate two dollars his fees as appraiser as per his receipt hereon and paid to J. A. Engle his fees as appraiser ($2 00) as per his receipt hereon, and hereby return this writ of execution unsatisfied as to the balance due thereon, having found no other property of the defendant company subject to execution within my bailiwick.

PHILLIP DELLINGER,
Sheriff Pulaski County.

WINAMAC, INDIANA, *Nov.* 13*th*, 1897.

Received of Philip Dellinger, sheriff, two dollars, my fees in full as appraiser in the above cause.

J. A. ENGLE.

WINAMAC, INDIANA, *Nov.* 13*th*, 1897.

Received of Philip Dellinger, sheriff, two dollars, my fees in full for services as appraiser in above cause.

E. H. APPLEGATE.

WINAMAC, INDIANA, *Nov.* 13*th*, 1897.

Received of Philip Dellinger, sheriff, twenty two dollars, my fees in full for publishing notice of sheriff's sale in McGuire *vs.* L. N. A. & C. Ry. Co.

J. J. GORRELL.

336

WINAMAC, IND., *Nov.* 13, 1897.

Received of Philip Dellinger, sheriff Pulaski county, eighteen hundred fifty one and 33/100 dollars to apply on above judgment.

PATRICK McGUIRE,
By WINFIELD, SPENCER & STEIS &
HATHAWAY, *P'ff's Att'ys.*

(Copy of notice.)

Sheriff's Sale.

By virtue of an execution to me directed from the clerk of the White circuit court, I will expose at public sale to the highest bidder, on Saturday, November 13, 1897, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, at the door of the court house in Pulaski county, Indiana, the rents and profits, for a term not exceeding seven years, of the following described real estate, to-wit:

Commencing at the northwest corner of lot No. twelve (12) in block No. nine (9) in the town of Francesville, in Pulaski county, in the State of Indiana, thence west parallel with the south line of Yellow street in said town fifty (50) feet to a post on the west line of Bill street at the place of beginning: thence west parallel with the south line of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way one hundred and ninety (190) feet to a post, thence east parallel with the south line of said Yellow street to the west line of Bill street, thence north with the west line of said Bill street one hundred and ninety (190) feet to the south line of Yellow street at the place of beginning. Appraised at $600.00.

337 Also commencing at the south west corner of lot No. seven (7) in block No. nine (9) in said town, thence west with the north line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel with the east line of said right of way sixty-six (66) feet to a post, thence east parallel with the north line of said Montgomery street to the west line of Bill street thence south with the west line of Bill street sixty-six (66) feet, to the place of beginning. Appraised at $600.00.

Also commencing at the north west corner of lot No. twelve (12) in block No. fourteen (14) in said town, thence west with the south line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line

of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way three hundred and sixty (360) feet to the north line of James street, thence east with the north line of James street to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of Montgomery street, to the place of beginning, appraised at $1,200.00.

Also—commencing at the northwest corner of lot No. twelve (12) in block No. twenty-two (22) in said town, thence west with the south line of James street to the west line of Bill street to a post at the place of beginning: thence west with the south line of
338 James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way three hundred and sixty (360) feet to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of James street, to the place of beginning, appraised at $600.00.

All the above described tracts of land being in the town of Francesville, in Pulaski county, in the State of Indiana.

And in case the rents and profits fail to bring the amount demanded, to satisfy the decree aforesaid, interest and costs, together with accruing costs, I will at the same time and place and in like manner as aforesaid, offer for sale at public auction and outcry, to the highest bidder, all the right, title, interest and estate in fee simple of the Louisville, New Albany and Chicago Railway Company in and to the above described real estate, or so much and such part thereof as may be necessary to satisfy the decree aforesaid, which is in favor of Patrick McGuire and against the Louisville, New Albany and Chicago Railway Company.

Said sale will be made subject to relief from the valuation and appraisement laws of the State of Indiana at not less than two-thirds (⅔) the appraised value thereof.

PHILIP DELLINGER,
Sheriff Pulaski County, Ind.

Oct. 22, '97.

STEIS & HATHAWAY, *Attorneys.*

339 (Endorsed on back:) Returnable 180 days from Oct., 16″ 1897. White circuit court. Patrick Maguire. *vs.* L. N. A. & C. Ry. Co., Execution. Date of judgment. September, 24″, 1896.—Repleviable and collectible without. relief.

Amount of judgment	$2416.33
Amount of costs	68.62
This writ, filing etc	1.25

O. B. No. 41. Page 294.
F. B. No. 19. Page 152.
Judg. dock. No. 10. Page 228.
Ex. doc. No. 17. Page 225.

Chas. C. Spencer, attorney for plaintiff. Filed Dec. 1, 1897. F. B. Humston clerk.

340 *Levy by Virtue of Execution.*

White County Circuit Court, September Term, 1896.

PATRICK MCGUIRE
against
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

The following is a list of property levied upon by virtue of an execution in this case, by me Philip Dellinger sheriff of Pulaski county, Ind. on this 18th day of October 1897, to-wit:

	Appraisement. Dollars.	Cents.
Commencing at the north west corner of lot No. 12 in block No. 9 in the town of Francesville in Pulaski county, Indiana, thence west parallel with the south line of Yellow street in said town fifty feet to a post on the west line of Bill street in said town, said post being at the place of beginning, thence west parallel with the south line of Yellow street in said town to a post at the east line of right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with said east line of said right of way 190 feet to a post, thence east parallel with the south line of said Yellow street to the west line of said Bill street, thence north parallel with the west line of said Bill street 190 feet to the place of beginning.	$600.00.	

Also—

Commencing at the south west corner of lot seven (7) in block nine (9) in said town thence west
341 with the north line of Montgomery street in said town to the west line of Bill street to a post at the place of beginning, thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel with the east line of said right of way sixty-six feet (66 ft.) to post, thence east parallel with the north line of said Montgomery street to the west line of Bill street, thence south with the west line of Bill street sixty six (66) feet to the place of beginning. $600.00.

Also—

Commencing at the north west corner of lot twelve (12) in block fourteen (14) in said town of Francesville, thence west with the south line of Montgomery street to a post on the west line of Bill street at the place of beginning, thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line of the right of way of what was formerly known as the Louisville, Chicago and New Albany Railway Company, thence south parallel with the east line of said right of way three hundred sixty feet (360) to the north line of James street, thence east with the north line of James street to the west
342 line of Bill street, thence north parallel with the west line of Bill street three hundred sixty feet (360) to the place of beginning at south line of Montgomery street. $1200.00.

Also—

Commencing at the north west corner of lot No. twelve (12) in block twenty-two (22) in said town of Francesville, thence west with the south line of James street to a post at the west line of Bill street at the place of beginning, thence west with the south line of James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way three hundred sixty feet (360) to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street, thence north with the west line of Bill street, three hundred sixty feet (360) to the south line of James street at the place of beginning.	$600.00.

All the above described tracts of lands being in the town of Francesville in Pulaski county, in the State of Indiana.

We, the undersigned, selected to appraise the property mentioned in the schedule to which this is annexed, upon oath say that the several items, to the best of our judgment, are worth the respective sums specified therein, and that the same is a fair cash
343 value at this time (exclusive of liens and incumbrances.)

JOSEPH A. ENGLE,
E. H. APPLEGATE,
Appraisers.

Subscribed and sworn to before me, this 20th day of October 1897.

PHILIP DELLINGER,
Sheriff Pulaski Co.

(Endorsed on back:) Patrick MaGuire *vs.* L. N. A. & C. Ry. Co. Levy by virtue of execution. Joseph A. Engle, E. H. Ap-legate appraisers. Filed Dec. 1, 1897. F. B. Humston, clerk.

Sheriff's Deed.

Defendants offered in evidence the sheriff's deed. (Identified by the reporter as Exhibit P.)

Plaintiff objected to the introduction of the sheriff's deed, for the reason that the description is so indefinite and uncertain as to render the conveyance void; the description does not on itself furnish the data for fixing the boundary lines, and does not refer to any other instrument or proceeding for the purpose of fixing the boundary lines of the land described. The court overruled the objection, to

which ruling of the court the plaintiff, at the time, excepted. And the said sheriff's deed being then read and given in evidence,
344 was in the words and figures following, to-wit:

EXHIBIT P.

This indenture, made this 22nd day of November, 1898 between Philip Dellinger, sheriff of Pulaski county, in the State of Indiana, of the first part, and Medary M. Hathaway of the county of Pulaski and State of Indiana of the second part, witnesseth:

That whereas, at the September term A. D. 1896 of the circuit court of White county, Indiana, Patrick McGuire as plaintiff recovered judgment by said court in a certain action therein against The Louisville, New Albany and Chicago Railway Company as defendant for two thousand four hundred and sixteen dollars and thirty three cents for his damages, and also the sum of sixty nine dollars and eighty seven cents for his costs in that behalf expended; all without any relief whatever from valuation or appraisement laws, as by the record thereof remaining in said court more fully appears.

And whereas, afterwards, to-wit: on the 16th day of October A. D. 1897, a writ of execution was duly issued, upon said judgment and under the seal of said court, attested by the clerk thereof, which was directed to the sheriff of the county of Pulaski by which writ said sheriff was commanded to levy the said sum of money of the property of the defendant, in said county, subject to execution, and that he should have those moneys at the clerk's office, according to law, to satisfy said judgment, interests and costs, and also, should, in like manner, make and return all interests and accruing costs thereon and that he should made due return of that writ to the clerk's office at the expiration of one hundred and eighty days from the date of the same.

345 And whereas, said writ of execution on the — day of ——, A. D. 1897, came to the hands of Philip Dellinger then the sheriff of said county to be executed, and he, as such sheriff on the — day of —— A. D. 18—, levied said writ of execution upon the following real estate in the county of Pulaski in the State of Indiana, to-wit:

Commencing at the northwest corner of lot No. twelve (12) in block No. nine (9) in the town of Francesville, in Pulaski county, in the State of Indiana, thence west parallel with the south line of Yellow street in said town fifty (50) feet to a post on the west line of Bill street at the place of beginning; thence west parallel with the south line of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way one hundred and ninety (190) feet to a post, thence east parallel with the south line of said Yellow street to the west line of Bill street, thence north with the west line of said Bill street

one hundred and ninety (190) feet to the south line of Yellow street at the place of beginning.

Also—commencing at the southwest corner of lot No. seven (7) in block No. nine (9) in said town, thence west with the north line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel with the east line of said right of way sixty-six (66) feet to a post, thence east parallel with the north line of said Montgomery street to the west line of Bill street, thence south with the west line of Bill street sixty-six (66) feet, to the place of beginning.

346 Also—commencing at the northwest corner of lot No. twelve (12) in block No. fourteen (14) in said town, thence west with the south line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way three hundred and sixty (360) feet to the north line of James street, thence east with the north line of James street to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of Montgomery street, to the place of beginning.

Also—commencing at the northwest corner of lot No. twelve (12) in block No. twenty-two (22) in said town, thence west with the south line of James street to the west line of Bill street to a post at the place of beginning; thence west with the south line of James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way three hundred and sixty (360) feet to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of James street, to the place of beginning.

All the above described tracts of land being in the town of Francesville, in Pulaski county, in the State of Indiana.

And the said Philip Dellinger as sheriff aforesaid, having legally advertised the same, did, on the 13th day of November A. D.

347 1897, at the court house door in Winamac in the county aforesaid, between the hours prescribed by law, at public auction, first expose to sale the rents and profits for a term not exceeding seven years, of said estate of the said The Louisville, New Albany and Chicago Railway Company in and to said real estate and no person bidding for the same, he then offered at public auction aforesaid, all the rights, title and interest in fee simple of the said Louis-

ville, New Albany and Chicago Railway Company in and to said estate, and the said Medary M. Hathaway did then and there bid the sum of two thousand dollars and no cents, and no person bidding more, the same was in due form openly struck off to the said Medary M. Hathaway for the said sum of two thousand dollars and no cents he being the highest and best bidder and that being the highest price bid for the same.

And whereas, also on said 13th day of November 1897, as required by law, said sheriff executed to said purchaser a certificate setting forth the foregoing facts, with the condition appended that if said premises were not redeemed within one year from the date thereof, by payment of the purchase money, with eight per centum interest thereon by said judgment defendant Louisville, New Albany and Chicago Railway Company heirs or assigns to said purchaser its heirs or assigns, said Medary M. Hathaway would be entitled to a deed of conveyance thereof.

Two dollars internal revenue stamps, properly cancelled.

Therefore, to confirm to said Medary M. Hathaway the sale so made as aforesaid, the said Philip Dellinger as sheriff as aforesaid, in consideration of said sum of two thousand dollars and no cents, to him in hand paid by said Medary M. Hathaway the receipt
348 whereof is hereby acknowleged hath granted, bargained and sold, and doth by these presents grant, bargain, sell, convey and confirm, to the said Medary M. Hathaway, his heirs and assigns forever, all the following real estate, situate in the county of Pulaski and State of Indiana, to-wit:

Commencing at the northwest corner of lot No. twelve (12) in block No. nine (9) in the town of Francesville, in Pulaski county, in the State of Indiana; thence west parallel with the south line of Yellow street in said town fifty (50) feet to a post on the west line of Bill street at the place of beginning: thence west parallel with the south line of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way one hundred and ninety (190) feet to a post, thence east parallel with the south line of said Yellow street to the west line of Bill street, thence north with the west line of said Bill street one hundred and ninety (190) feet to the south line of Yellow street at the place of beginning.

Also—commencing at the southwest corner of lot No. seven (7) in block No. nine (9) in said town, thence west with the north line of Montgomery street to the west line of Bill street to a post at the place of beginning: thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel with the east line of said right of way sixty-six (66) feet to a post, thence east par-

allel with the north line of said Montgomery street to the west line of Bill street, thence south with the west line of Bill street sixty-six (66) feet, to the place of beginning.

Also—commencing at the northwest corner, of lot No. twelve
349 (12) in block No. fourteen (14) in said town, thence west with the south line of Montgomery street to the west line of Bill street to a post at the place of beginning: thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way three hundred and sixty (360) feet to the north line of James street, thence east with the north line of James street to the west line of Bill street, thence north with the west line o- Bill street three hundred and sixty (360) feet to the south line of Montgomery street, to the place of beginning.

Also—commencing at the northwest corner of lot No. twelve (12) in block No. twenty-two (22) in said town, thence west with the south line of James street to the west line of Bill street to a post at the place of beginning: thence west with the south line of James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way three hundred and sixty (360) feet to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of James street, to the place of beginning.

To have and to hold, all and singular, the premises aforesaid, with the privileges and appurtenances, to the said Medary M. Hathaway heirs and assigns forever. in as full and ample a manner as the same was held by the said The Louisville, New Albany and Chicago Railway Company immediately before the levying of the aforesaid execution.

In witness whereof, the said Philip Dellinger as sheriff as
350 aforesaid, has hereunto set his hand and seal, the day and year first above written.

PHILIP DELLINGER. [SEAL.]

STATE OF INDIANA, } *sct:*
Pulaski County, }

Before me, John W. Morrow, a notary public in and for said county, personally came Philip Dellinger, sheriff of said county, and acknowledged the foregoing conveyance to be his voluntary act and deed, as such sheriff.

In witness whereof, I have hereunto subscribed my name, and affixed my notarial seal of office, this 22nd, day of November 1898.

[SEAL.] JOHN W. MORROW,
Notary Public.

(Endorsed on back:) 876 Philip Dellinger sheriff Pulaski county, to Medary M. Hathaway Deed on execution. Received for record, the 19 day of Dec. A. D., 1898, at 8 o'clock a. m., and recorded in Record 64 pages 402 to 407 W. H. Oliver recorder of Pulaski
351 county. Duly entered for taxation. Dec. 19 1898 J. N. Hayworth auditor. Fees $40/100 p'd. 1.50 p'd.

Transcript of Judgment, McGuire v. L., N. A. & C.

Defendants offered in evidence a transcript of the judgment in the case of Patrick Maguire *vs.* The Louisville, New Albany & Chicago Railway Company, filed in the Pulaski circuit court, the following file mark being admitted by the plaintiff, and formal proof thereof dispensed with, to-wit: "Filed and recorded January 26″ 1897 at 10 o'clock p. m. of said day, Jno. C. Jones, clerk Pulaski circuit court." (Identified by the reporter as Exhibit Q.)

And the said transcript of judgment being them read and given in evidence was in the words and figures following, to-wit:

EXHIBIT Q.

Transcript to Bind Real Estate.

Be it remembered, that at a term of the circuit court of White county Indiana, begun and held at the court house in the town of Monticello, in said county, commencing on the 1st Monday being the 7″ day of September 1896.—said term being held in pursuance of law; present the Honorable Truman F. Palmer, sole judge of said court, F. B. Humston clerk thereof and Simon U. Dobbins sheriff of said county, and afterwards on the 16″ judicial day of said term being the 24″ day of September, 1896, present the Honorable Geo. Burson, special judge, heretofore appointed, F. B. Humston clerk and Simon U. Dobbins, sheriff of said county the following proceedings were had to-wit:—

352 PATRICK MCGUIRE
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

Come again the parties by counsel, and the court now files his special finding of facts and conclusions of law thereon as follows; to-wit:

STATE OF INDIANA, } ss:
White County, }

White Circuit Court, September Term, 1896.

PATRICK MCGUIRE
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

Special Finding.

The court at the request of the defendant made at the proper time, makes the following special finding of facts, with its conclusions of law thereon.

1st. During the years of 1892 and 1893 and for several years prior thereto, the defendant, The Louisville, New Albany and Chicago Railway Company was a corporation organized under the laws of the State of Indiana, and was engaged in the business of a common carrier, and shipped straw, hay and other kinds of farm products, and during all that period of time had a station along its line of railroad called Marlboro, Jasper county, Indiana. And the said defendant was a common carrier of freight, and carried all kinds of farm products from the said station of Marlboro to the city of Chicago, and from points in the State of Illinois, and to Louisville and other points in the State of Kentucky, and to Columbus and other points in the State of Ohio, and to Philadelphia, Lansdale
353 Newcastle and other points in the State of Pennsylvania, and to Cobleskill, New York city and other points in the State of New York; and it had its general freight office in the city of Chicago and the State of Illinois.

2nd. The main line of the defendant's railroad during the years of 1892 and 1893 and for several years prior thereto, extended from the city of Chicago, Illinois, through the State of Illinois, and through the State of Indiana, to Louisville Kentucky, and from Chicago Illinois to the city of Indianapolis Indiana, and the station of Marlboro, Jasper county, Indiana, was a station for the shipment of freight consisting of all kinds of farm products.

3rd. The defendant during the years 1892 and 1893 and for several years prior thereto, scheduled its freight rates without division into parts or interest to all the cities and towns named in special finding, and during that same period of time held itself out as a common carrier and shipper of hay, grain, and other farm products from the station of Marlboro to the points named in the finding during all that time and advertised for freight business from said station of Marlboro to said points.

4th. The defendant during said years of 1892 and 1893 and for several years prior thereto operated the sole and only line of railway over which surplus farm products from the vicinity and station of

Marlboro could be transported to market, and had such arrangements with connecting lines that no re-shipments, or re-billing of freight was required from the station of Marlboro, Jasper county, Indiana to the cities of Chicago, Pittsburg, Lansdale, Philadelphia, Cobleskill, and Central Bridge, and the defendant offered to enter into contracts with shippers to ship hay and other farm products from said station of Marlboro to said points upon certain
354 scheduled rates without any change of cars, and at said period of time the plaintiff had knowledge that the defendant was thus holding itself out as a common carrier of hay and other farm products, from the said station of Marlboro and to points named, and relying upon said fact, engaged in the business of buying hay for shipment to the points named from the station of Marlboro, Jasper county, Indiana; and prepared himself with hay-presses, at or near the station of Marlboro, for the purpose of purchasing hay for shipment upon the defendant's road during the year of 1892, of which fact the defendant had knowledge that the plaintiff was thus induced to engage in the business of shipping hay.

5th. The plaintiff during the month of October, 1892, purchased in the vicinity of the station of Marlboro from farmers 872.81 tons of hay for shipment on the defendant's railroad from the station of Marlboro to Chicago in the State of Illinois; Pittsburg, Newcastle, Lansdale, Philadelphia, in the State of Pennsylvania, and Cobleskill and Central Bridge in the State of New York and on the Atlantic sea-board, and during the fall of 1892 and the winter of 1893 used his hay-presses for that purpose and pressed the hay thus purchased and had it hauled to the station of Marlboro for shipment on the defendant's railroad, and delivered and tendered said 872.81 tons of hay to the defendant at the station of Marlboro for shipment to the cities of Peoria, Chicago in the State of Illinois, Pittsburg, Newcastle, Lansdale and Philadelphia in the State of Pennsylvania, and Cobleskill, Central Bridge in the State of New York, and Cincinnati in the State of Ohio, and the said hay at the time the same was delivered and tendered to the defendant for shipment was in good condition, and the plaintiff at the time of said delivery and tender demanded of the defendant cars for shipping the same. That such demands for cars were made
355 daily during the months of December, 1892, January, February and March 1893. That the defendant failed and refused to furnish the plaintiff with cars. The time such cars were demanded such hay was piled up near the track of the defendant at the station of Marlboro at the places pointed out by the defendant's agent.

At that place the defendant had no storehouses or hay barns in which to store the hay while waiting for shipment, and the plaintiff had no storehouse or barns at the station of Marlboro in which to store hay thus delivered and tendered for shipment, while waiting for shipment, which fact was well known to the defendant; that while the hay was thus lying at the defendant's station awaiting shipment, and after it had been delivered by the plaintiff; the

plaintiff to protect said hay from weather caused the same to be covered with canvass, which was the usual and only way of protecting the same against the weather, that this was the only means the plaintiff could use to protect said hay from the weather.

6th. The defendant upon demand for cars could have reasonably furnished cars within two days, to ship the hay — fast as delivered and tendered by the plaintiff, that had the defendant furnished the cars within two days from the time they were demanded by the plaintiff all the said hay could have been shipped to the points named, without the same in any manner being affected by exposure to the weather or from other cause

7th. Of the 872.81 tons of hay herein found to have been delivered and tendered to the defendant for shipment, 600 tons hay at the station of Marlboro exposed to the weather after the same had been delivered and ready for shipment and the plaintiff had demanded cars to ship the same from 30 to 60 days but the defendant did not furnish or offer to furnish the plaintiff with cars to ship the same.

8th. Of the 600 tons herein found to have been delayed, after
356 delivery and tender to the defendant for shipment for from 30 to 60 days by reason of the failure of the defendant to furnish cars, 242 tons of this hay became wet and by reason of rains and snows was destroyed and rendered valueless. The plaintiff during this time employed men to watch this hay, keep the same covered with canvass, to protect the same from snows and rains. The defendant knew during all of said period of time the said hay was lying at the station of Marlboro, and had been delivered and tendered for shipment, and that cars had been demanded. At the time the plaintiff demanded cars to ship said 600 tons of hay he notified the defendant that he wished suitable cars to ship said hay to the points hereinbefore named; that such hay became valueless and was destroyed by reason of its lying at the station of Marlboro exposed to the rains and snows; after the same had been delivered and tendered for shipment, and cars had been demanded, that there was no other reason for the destruction of said hay, than the failure and neglect to furnish the plaintiff with cars upon the demand herein found. I further find that the plaintiff did not fail to use any efforts in his power to prevent said hay from being destroyed after the same had been delivered and tendered for shipment as aforesaid, and that the destruction of said hay was by reason of the failure and neglect of the defendant to furnish cars as herein found.

9th. I further find that there was no emergency calling for from the defendants an unusual amount of cars at the station of Marlboro, or other station along its line, which disabled it to furnish the plaintiff with cars within a reasonable time after demand had been made and that the defendant had sufficient cars to ship the hay grain and other farm products, from any station along its line within a rea-
sonable time after demand for cars, during the fall of 1892
357 and the months of March and April 1893.

10th. I further find, that when the plaintiff made his sev-

eral demands for cars to ship said 600 tons of hay the defendant promised to furnish the plaintiff with cars within a reasonable time.

11th. I further find that the plaintiff did not in any way contribute by any negligence of his to the loss of said hay.

12th. I further find that the said 242 tons of hay at the time the same was delivered and tendered for shipment was worth $1462.00.

13th. I find that the market value of said hay at the points, for which the plaintiff demanded cars to ship said hay at the time the demand was made, and the hay was delivered and tendered for shipment and within such time as said hay could reasonably have been shipped, after deducting the costs of shipment or freight charges was $1462.00.

14th. I further find that said 242 tons of hay was worth at the time it was delivered and tendered for shipment, and cars were demanded at the station of Marlboro, $1462.00.

15th. The plaintiff at the time of delivery and tender of said hay for shipment was ready and willing to pay the freight thereon, but it was the custom and rule of the company not to require pre-payment of freight but the freight was paid by the consignee and charged up by him against the plaintiff, which the plaintiff paid. These rules were well known to the plaintiff, and they were acted upon by him and the defendant.

16th. Of the 872.81 tons of hay tendered by the plaintiff to the defendant for shipment to the points named, 300 tons were detained at the station of Marlboro for a period of 60 days because of the failure and neglect of the defendant to furnish cars and while thus detained at the station the market price of the hay declined
358 at the points of destination 50 cents per ton; and the defendant did not furnish the plaintiff with cars to ship said 300 tons of hay until after said decline in the market, and the plaintiff was compelled to and did ship said hay to the points of destination, and was compelled to and did sell the same upon said declining market, and thereby lost fifty cents per ton or $150.00.

17th. I further find that had the defendant furnished the plaintiff with cars when demanded, or within a reasonable time therefrom, towit, two days for shipping said 300 tons of hay the same would have reached the point of destination before the decline in the market, but the loss to the plaintiff of said $150.00 was caused wholly by the aforesaid failure and neglect of the defendant to furnish cars.

18th. After said hay was delivered and tendered to the defendant for shipment by the plaintiff, and while being detained at the station by reason of the failure of the defendant to furnish cars, the plaintiff was compelled to and did employ a watchman, or a man to watch said hay and take care of the same; that the services of said man were worth $1.50 per day, which the plaintiff paid him for watching said hay, as it was exposed to the weather, and also exposed to fire by reason of passing engines, that he thus employed a

man for 60 days and paid him therefor $90.00 and that the employment of said watchman was rendered necessary by reason of the aforesaid failure and neglect of the defendant to furnish cars to ship said hay, within reasonable time after demand was made.

19th. I further find that on the 10" day of December 1892 of the 872.81 tons herein found the plaintiff delivered and tendered to the defendant for shipment (9) nine tons of hay to be shipped to G. S. Blakeslee & Co., Chicago, Illinois and demanded a car for that purpose. I further find that on or about the 10" day of
359 December the defendant furnished the plaintiff with a car to ship said nine tons of hay, and the same was loaded aboard the car by the plaintiff on that day and the same when loaded was in good condition, and was all prairie hay; that the defendant transported said car to the city of Chicago and it arrived there on the 13" day of December 1892 and was detained by the defendant at its yards, at Chicago until the 24" day of January 1893 before it was put upon the side track for unloading, and when unloaded it was found that the hay had become wet and damaged and entirely destroyed, and rendering it entirely valueless, that it was impossible for the plaintiff's consignee to unload said car until thus placed upon the side track, that the failure to put said car upon the side track for unloading from the 13" day of December until the 24" day of January following, was by reason of the carelessness and negligence of the defendants or its employees, and was without any fault or negligence on the part of the plaintiff; that had said car been put upon the side track for unloading within a reasonable time after it arrived in Chicago the said hay would have arrived in good condition in the city of Chicago.

20th. I further find that the plaintiff was compelled to pay and did pay to the defendant the freight on the said nine tons of hay at the rate of $1.20 per ton, that said hay was worth in the market in Chicago at the time it arrived there and the time it was unloaded, if it had arrived in good condition $8.50 per ton or in all $76.50.

21st. I further find at the time of the shipment of said hay the defendant delivered to the plaintiff a bill of lading, in substance as follows:—

MARLBORO, IND., *Dec.* 10", 1892.

Received from Patrick Maguire—the property described below, in apparent good order. Marked consigned and destined as indicated below which said Louisville, New Albany & Chicago
360–364 Railway Company agrees to carry to said destination; description of articles—nine tons of hay. Consignees and destination G. S. Blakeslee & Co. Chicago, Ills.—And then and there entered into a contract with the plaintiff to ship said hay to Chicago and within a reasonable time, and in good order.

22nd. That by reason of said hay being damaged as herein found the same became worthless and wholly without value, and the plaintiff received nothing therefor, and was lost to him.

Third paragraph.

I further find that the defendant entered into a contract in the fall of 1892, with the plaintiff, whereby it agreed to ship said 872.81 tons of hay on the following terms and conditions, to-wit:—To Chicago at the rate of six cents per hundred pounds; to Cincinnati at the rate of ten cents per hundred pounds; to Pittsburg at the rate of fifteen cents per hundred pounds; to New York and points in the State of New York at the rate of twenty-five cents per hundred pounds; to Peoria Illinois at the rate of seven cents per hundred pounds.

23rd. I further find that the defendant furnished plaintiff with cars 76 cars of inferior size, which would not hold ten tons of hay on the contrary they would average only nine tons of hay, that the plaintiff made objections to the defendant of the size of these cars, that he was informed by the agent of the defendant at Marlboro that they were the best cars he could get, that the defendant demanded and exacted of the consignee- of the plaintiff, freight charges at the rate of ten tons per car which the consignees were compelled to and did pay freight at the rate of ten tons per car, which consignees charged up to the plaintiff and which the plaintiff was compelled to pay and did pay thus and thereby the plaintiff was compelled to pay excessive freight as follows: On one car to Chicago
365 $1.20, 29 cars shipped to Cincinnati, on which the plaintiff was thus compelled to pay and did pay for 29 tons extra at the rate of fifteen cents per ton amounting to $58.00, that he shipped 15 cars to Pittsburg, for which the defendant demanded and received pay as aforesaid at the rate of ten tons per car and the plaintiff was compelled as herein found to pay extra freight to the amount of 15 tons at the rate of $3.00 per ton, in all $45.00, of the seventy six cars thirteen were shipped to New York for which the defendant demanded and received and which the plaintiff was compelled to pay as herein found freight at the rate of ten tons per car, thus and thereby the plaintiff was compelled to pay, which was received by the defendant the thirteen tons of extra freight at the rate of $5.00 per ton which would be $65.00. Of the seventy six cars sixteen were shipped to Peoria, Illinois, for which the defendant demanded and received and this plaintiff was compelled to pay as herein found at the rate of ten tons per car, that the defendant thus received and the plaintiff compelled excessive freight to the amount of sixteen tons at the rate of $1.40 *cents* per ton amounting in all $22.40. That the defendant exacted of the plaintiff's consignee above the contract price and received the same for freight, which the plaintiff was compelled to pay as herein found to the amount of $181.60.

24th. I further find that said payment of excessive freight by the plaintiff was not voluntary, and was paid as herein found.

25th. I further find that the defendant was not entitled to receive and demand such excessive freight.

Conclusions of Law upon the Foregoing Facts.

1st. I find the law to be as follows:—The plaintiff is entitled to recover upon the first paragraph of his complaint the
366 sum of $1702. *dollars* with interest thereon from the first day of June 1893. amounting to $306.36 *dollars*, in all the sum of $2008.36 and judgment should — for the plaintiff for that amount.

2nd. I find that the plaintiff is entitled to recover from the defendant upon his second paragraph of complaint the amount of seventy-six dollars and fifty cents with interest thereon from the first day of January, 1893. amounting to $13.68 *dollars*, in all $90.18 and judgment should be for plaintiff for — amount.

3rd. I find that the plaintiff is entitled to recover from the defendant upon the third paragraph of his complaint the sum of one hundred and ninety-one dollars, with interest thereon from the first day of June 1892. amounting to $36.38 *dollars* in all $227.98 *dollars* and judgment should be for plaintiff for that amount.

GEORGE BURSON,
Special Judge."

The defendant by counsel now except- to each conclusion of law herein.

Upon his foregoing finding of facts and conclusions of law thereon, the court finds for the plaintiff; that there is due the plaintiff and from the defendant the sum of two thousand four hundred and sixteen dollars and thirty three cents.

It is therefore considered and adjudged by the court that the plaintiff recover of the defendant the said sum of two thousand four hundred and sixteen dollars and thirty three cents, with interest at the rate of six per cent. per annum, together with his costs made, paid out and expended.

The defendant by counsel now filed its motion in these words towit:—(insert) for a new trial of this cause.

The court now overrules the motion of the defendant for a new trial hereof; to which ruling of the court the defendant excepts
367 and the defendant is given 90 days in which to file bond in the sum of three thousand dollars; and to file its bill of exceptions herein.

STATE OF INDIANA, }
White County, } ss:

I, F. B. Humston clerk of the circuit court in and for said county and State certify the above and foregoing to be a full true and complete copy of the judgment rendered in this court in the above entitled cause.

Witness my hand and the seal of said court at office this 23rd day of January 1897.

F. B. HUMSTON,
Clerk Circuit Court.

[SEAL.]

(Endorsed on back :) Filed and recorded January 28″ 1897 at 1 o'clock p. m. of said day Jno. C. Jones clerk Pulaski circuit court.

368 *Execution Docket.*

Defendants offered in evidence execution docket # 17 of the White circuit court, (it being admitted by the parties to this suit that it is execution docket # 17 of the White circuit court) at pages 225, 225, 230, 230, 231, and the said pages of the said docket being then read and given in evidence were in the words and figures following, towit:—

Date of issuing.	Kind of writ.	Parties.	
		Plaintiff.	Defendant.
1897. Oct. 16″	1″ Ex.....	Patrick Maguire..	L. N. A. and C. Ry. Co.

Against whom judgment was rendered.	Amount of judgment.	Date of judgment.	Costs.	To what officer issued.
	$ Cts.		$ Cts.	
Def't.....	2,416.33	1896. Sept. 24″....	68.52	Sheriff Pulaski.

To whom delivered.	Officer's return to the writ.
Co. by C. C. Spencer, att'y....	

WINAMAC, INDIANA, *Oct. 18th*, 1897.

This writ of execution came to hand, October 18th, 1897, and after a strict and careful search I found no personal property of the defendant within my bailiwick of any kind or nature on which to levy said execution and I then levied upon the following real estate as the property of the said defendant, in Pulaski county, Indiana, described as follows, to-wit:—Commencing at the northwest corner

of lot 12 in block 9 in the town of Francesville, in Pulaski county, Indiana, thence west with the south line of Yellow street to the west line of Bill street to the place of beginning, thence west with the south line of Yellow street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago rail road, thence south with the east line of said right of way 190 feet, thence east, parallel with the south line of said Yellow street to the west line of Bill street thence north with the
369 west line of Bill street to Yellow street to the place of beginning.

Also commencing at the south west corner of lot 7 in block 9 in said town, thence west to the west line of Bill street to the place of beginning, thence west with the north line of Montgomery street to a point 5 feet east of the east line of the right of way of said railroad, thence north parallel with said right of way 66 feet to post; thence east parallel with the north line of Montgomery street to the west line of Bill street thence south with the west line of Bill street to Montgomery street to the place of beginning.

Also commencing at the north west corner of lot 12 in block 14, thence west with the south line of Montgomery street to the west line of Bill street to the place of beginning, thence west with the south line of Montgomery street to a point 30 feet east of the east line of the right of way of said railway company, thence south, parallel with the east line of said right of way to James street, thence east with the north line of James street to the west line of Bill street, thence north with the west line of Bill street to the south line of Montgomery street to the place of beginning.

Also commencing at a point at the north west corner of lot 12 in block No. 22, thence west with the south line of James street to the west line of Bill street at the place of beginning, thence west with the south line of James street to the east line of the right of way of said railway, thence south with the east line of said right of way, to the north line of Lyman avenue, thence east with the north line of Lyman avenue, to the west line of Bill street, thence north with the west line of Bill street to the south line of James street to the place of beginning, all of said land being in the town of Francesville, in Salem township, in Pulaski county, in the State of Indiana,
370 and immediately after making my said levy on said real estate I caused the same to be appraised by E. H. Applegate and J. A. Engle, both of whom are resident householders and free holders of said town of Francesville, of the township of Salem, county of Pulaski and State of Indiana, the town, township, county and State within which said real estate is situated, which said appraisement of said real estate was appraised in parcels, reduced to writing and is filed herewith as part of this, my return of said execution.

And on the 22nd day of October, 1897, in pursuance to the command of this execution, I advertised the real estate herein described for sale at the court house door of Pulaski county, Indiana, on the 13th day of November, 1897, by publication in the Pulaski County

Democrat, a weekly newspaper of general circulation printed and published in the town of Winamac, in said town and county and nearest to where said real estate is situated, for more than three weeks successively, immediately before the day of sale and by posting up a printed notice thereof at the court house door of said county and by posting up like printed notices thereof at three public places in the town of Francesville, in the township of Salem in said county, the township in which said real estate is situated, which was done more than twenty days immediately preceding the day of sale, a copy of said notice being hereunto attached and made a part of this return.

And on the day set for the sale of said real estate, to-wit:—November 13", 1897, between the hours of 10 o'clock a. m. and 4 o'clock p. m. at the court house door of said county, I first offered to the highest and best bidder, for cash in hand the rents and profits of all that portion of said real estate of the following description, to-wit:—

371 Commencing at the north west corner of lot 12 in block 9 in the town of Francesville, in Pulaski county, Indiana, thence west parallel with Yellow street in said town, 50 feet to a post on the west line of Bill street at the place of beginning, thence west parallel with the south line of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way 190 ft. to a post, thence east parallel with the south line of Yellow street 150 feet to the west line of Bill street thence north with the west side of Bill street, 190 feet to the place of beginning (which said described land I will hereinafter refer to in this return and designate it as "tract No. 1") for a period not exceeding seven years, by the year, and receiving no bid therefor I did then and there offer to the highest and best bidder, for cash in hand, the rents and profits of all that portion of said real estate, of the following description, to-wit:—all that portion thereof, commencing at the south west corner of lot 7 in block 9 in said town, thence west with the north line of Montgomery street, to the west line of Bill street at the place of beginning, thence west with the north line of said Montgomery street to a post at a point 5 feet east of the east line of the right of way of said railway company, thence north, parallel with the east line of said right of way 66 feet, thence east parallel with the north line of said Montgomery street to the west line of Bill street, thence south with the west line of Bill street to the place of beginning (which tract last above described I shall hereinafter refer to in this return and designate it as tract No. 2) for a period not exceeding seven years, by the year, and receiving no bid therefor I did then and there offer to the highest and best bidder, for cash in hand, the rents and profits of all that portion of said real estate of the following description, to-wit:—

372 Commencing at the north west corner of lot 12 in block 14 in said town thence west with the south line of Montgomery

street to the west line of Bill street to a post at the place of beginning, thence west with the south line of Montgomery street to a point 30 feet east of the east line of the right of way of said railway company, thence south parallel with the east line of said right of way 360 feet to the north line of James street thence east with the north line of James street to the west line of Bill street, thence north with the west line of Bill street to the place of beginning, (which tract last above described I shall, in this return, hereinafter refer to and designate as "tract No. 3," for a period not exceeding seven years by the year, and receiving no bid therefor I did then and there offer to the highest and best bidder, for cash, the rents and profits of all that portion of said real estate of the following description, to-wit:—

Commencing at the north west corner of lot 12 in block 22 in said town, thence west with the south line of Lyman street to the west line of Bill street to the place of beginning, thence west with the south line of James street to the east line of the right of way of said railway company, thence south wi- the east line of said right of way to the north line of Lyman avenue, thence east with the north line of Lyman avenue, to the west line of Bill street, thence north with the west line of Bill street to the south line of James street to the place of beginning, which tract of land last above described, I shall, in this return hereinafter refer to and designate as "tract No. 4," and receiving no bids therefor I did then and there offer the rents and profits of tracts Nos. one and two for a period not exceeding seven years by the year, for cash in hand, to the highest and
373 best bidder, and receiving no bid therefor, I then and there offered to the highest bidder for cash in hand the rents and profits of tracts Nos. 1–2 & 3 for a period not exceeding seven years, by the year and receiving no bid therefor I then and there offered to the highest and best bidder for cash in hand, the rents and profits of tracts Nos. 1–2–3 & 4 for a period not exceeding seven years, and receiving no bids therefor I then and there offered to the highest and best bidder for cash in hand the fee simple right of the defendant of, in and to said tract No. 1 of said real estate and receiving no bid therefor I did then and there offer to the highest and best bidder for cash the fee simple right of the defendant of, in and to tracts Nos. 1 and 2 of said real estate and receiving no bid therefor I did then and there offer the fee simple right of the defendant of in and to tracts Nos. 1–2 & 3 of said real estate and receiving no bid therefor I did then and there offer to the highest and best bidder for cash in hand the fee simple right of the defendant company in and to any two of said tracts and receiving no bid therefor, I did then and there offer to the highest and best bidder for cash in hand the fee simple right of the defendant company of, in and to any three of said tracts and receiving no bid therefor I did then and there offer the fee simple right of the defendant company in and to tracts Nos. 1–2–3 & 4, being all of said described real estate and Medary M. Hathaway bid therefor the sum of

two thousand dollars, ($2,000.00) and that being the highest and best bid then and there offered and the same being more than two-thirds of the appraised value thereof the same was openly struck off and sold to said Medary M. Hathaway for the sum of two thousand dollars ($2,000.00), there being present at and during all the time
374 of said sale more than three competent bidders; and the said purchaser having paid over to me the amount so bid by him, I did then and there execute to him my certificate of purchase, bearing even date herewith.

I then paid over to the plaintiff, as per. his receipt herewith and hereon eighteen hundred fifty one and 33/100 dollars. I paid over to the clerk of White county sixty nine and 87/100 dollars original costs and have retained fifty two and 80/100 dollars. my fees. Paid over to J. J. Gorrel, printer twenty two dollars, his fees, as per, his receipt hereon. Paid to E. H. Applegate two dollars his fee as appraiser as per. his receipt hereon and paid to J. A. Engle his fees as appraiser ($2.00) as per his receipt hereon, and I hereby return this writ of execution unsatisfied as to the balance due thereon, having found no other property of the defendant company subject to execution within my bailiwick.

PHILLIP DELLINGER,
Sheriff Pulaski County.

WINAMAC, INDIANA, *Nov.* 13*th*, 1897.

Received of Philip Dellinger, sheriff two dollars, my fees in full as appraiser in the above cause.

J. A. ENGLE.

WINAMAC, INDIANA, *Nov.* 13*th*, 1897.

Received of Philip Dellinger sheriff, two dollars, my fees in full for services as appraiser in above cause.

E. H. APPLEGATE.

WINAMAC, INDIANA, *Nov.* 13*th*, 1897.

Received of Philip Dellinger, sheriff twenty two dollars my fees in full for publishing notice of sheriff's sale in McGuire *vs.* L. N. A. & C. Ry. Co.

J. J. GORRELL.

375 WINAMAC, IND., *Nov.* 13, 1897.

Received of Philip Dellinger, sheriff Pulaski county, eighteen hundred fifty one and 35/100 dollars to apply on above judgment.

PATRICK McGUIRE,
By WINFIELD, SPENCER & STEIS &
HATHAWAY, *Plf's Att'ys.*

White County Circuit Court, September Term, 1896.

PATRICK MCGUIRE
against
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

The following is a list of property levied upon by virtue of an execution in this case, by me Philip Dellinger, sheriff of Pulaski county, Ind. on this 18th. day of October, 1897, to-wit:—

	Appraisement. Dollars. Cents.
Commencing at the north west corner of lot No. 12 in block 9 in the town of Francesville in Pulaski county, thence west parallel with the south line of Yellow street in said town, fifty feet to a post on the west line of Bill street in said town, said post being at the place of beginning, thence west parallel with the south line of Yellow street in said town to a post at the last line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company thence south parallel with said east line of said right of way—190—feet to a post, thence east parallel with the south line of said Yellow street to the west line of said Bill street, thence north parallel with the west line of said Bill street 190 feet to the place of beginning.—	$600.00.
376 Also—	
Commencing at the south west corner of lot seven—(7)—in block nine (9) in said town thence west with the north line of Montgomery street in said town to the west line of Bill street to a post at the place of beginning, thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel with the last line of said right of way sixty-six (66) feet to post, thence east parallel with the north line of said Montgomery street to the west line of Bill street thence south with the west line of Bill street sixty six (66) feet, to the place of beginning.—	$600.00.

Also—

Commencing at the north west corner of lot twelve (12) in block fourteen (14) in said town of Francesville, thence west with the south line of Montgomery street to a post on the west line of Bill street at the place of beginning, thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line of the right of way of what was formerly known as the Louisville, Chicago and New Albany Railway Company, thence south parallel with the east line of said right of way three hundred sixty feet, (360) to the north line of James street, thence east with the north line of James street to the west line of Bill street, thence north parallel with the west line of Bill street three hundred sixty (360) — to the place of beginning, at south line of Montgomery street.—	$1200.00.

377 Also—

Commencing at the north west corner of lot No. twelve—(12) in block twenty-two (22) in said town of Francesville, thence west with the south line of James street to a post at the west line of Bill street at the place of beginning, thence west, with the south line of James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way three hundred sixty feet (360) to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street three hundred sixty feet (360′) to the south line of James street, at the place of beginning.	$600.00.

All the above described tracts of lands being in the town of Francesville in Pulaski county, in the State of Indiana.

We, the undersigned, selected to appraise the property mentioned in the schedule, to which this is annexed, upon oath say that the several items, to the best of our judgment are worth the respective sums specified therein and that the same is a fair cash value at this time (exclusive of liens and incumbrances).

JOSEPH A. ENGLE,
E. H. APPLEGATE,
Appraisers.

Subscribed and sworn to before me, this 20th. day of October, 1897.

PHILIP DELLINGER,
Sheriff Pulaski Co.

Filed December 1"—1897.

F. B. HUMSTON, *Clerk.*

378 *Sheriff's Sale.*

By virtue of an execution to me directed from the clerk of the White circuit court, I will expose at public sale to the highest bidder, on Saturday, November 13, 1897, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, at the door of the court house in Pulaski county, Indiana, the rents and profits, for a term not exceeding seven years, of the following described real estate, to-wit:

Commencing at the northwest corner of lot number twelve (12) in block No. nine (9) in the town of Francesville, in Pulaski county, in the State of Indiana, thence west parallel with the south line of Yellow street in said town fifty feet (50) to a post on the west line of Bill street at the place of beginning; thence west parallel with the south line of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way one hundred and ninety (190) feet to a post, thence east parallel with the south line of said Yellow street to the west line of Bill street, thence north with the west line of said Bill street one hundred and ninety (190) feet to the south line of Yellow street at the place of beginning. Appraised at $600.00.

Also commencing at the south west corner of lot No. (7) seven in block No. nine (9) in said town, thence west with the north line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel
379 with the east line of said right of way sixty-six (66) feet to a post, thence east parallel with the north line of said Montgomery street to the west line of Bill street, thence south with the west line of Bill street sixty-six (66) feet, to the place of beginning. Appraised at $600.00.

Also—commencing at the north-west corner of lot No. twelve (12) in block No. fourteen (14) in said town, thence west with the south line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel

with the east line of said right of way three hundred and sixty (360) feet to the north line of James street, thence east with the north line of James street to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of Montgomery street to the place of beginning, appraised at $1,200.00.

Also—commencing at the northwest corner of lot No. twelve (12) in block No. twenty-two (22) in said town, thence west with the south line of James street to the west line of Bill street to a post at the place of beginning; thence west with the south line of James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way three hundred and sixty (360) feet to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of James
380 street to the place of beginning, appraised at $600.00.

All the above described tracts of land being in the town of Francesville, in Pulaski county, in the State of Indiana.

And in the case the rents and profits fail to bring the amount demanded to satisfy the decree aforesaid, interest and costs, together with accruing costs, I will at the same time and place and in like manner as aforesaid, offer for sale at public auction and outcry, to the highest bidder, all the right, title, interest and estate in fee simple of the Louisville, New Albany and Chicago Railway Company in and to the above described real estate, or so much and such part thereof as may be necessary to satisfy the decree aforesaid, which is in favor of Patrick McGuire and against the Louisville, New Albany and Chicago Railway Company.

Said sale will be made subject to relief from the valuation and appraisement laws of the State of Indiana at not less than two-thirds (⅔) the appraised value thereof.

PHILIP DELLINGER,
Sheriff Pulaski County, Ind.

Oct. 22, '97.

STEIS & HATHAWAY, *Attorneys.*

381 MEDARY HATHAWAY.

MEDARY HATHAWAY, a witness called on behalf of the defendants, after being first duly sworn, testified as follows, to-wit:

Examination in chief.

Questions by Judge WINFIELD, of counsel for the defendants:

Q. State your name to the court and jury?
A. Medary Hathaway.

Q. You are one of the defendants in this case?
A. I am.
Q. You live in Winamac, Indiana?
A. Yes, sir.
Q. I will ask you if you were with the sheriff at the time the levy was made on the property described in this return?
A. I was.
Q. How long had you been acquainted with that ground?
A. I presume for eighteen or twenty years.
Q. I will ask you if any part of that ground has ever been used by the railroad, the Louisville, New Albany and Chicago Railway Company or the Louisville, New Albany and Chicago Railroad Company?

Plaintiff objected to the question, because the title derived under the deed of Brooks is complete, irrespective of whether the property was used by the railroad company or not; it is not competent for the defendants in this case to either present the issue or have any rights determined upon the issue of the land taken under the deed of conveyance to be necessary or unnecessary; that the question of whether the title and extent of the property taken was necessary or unnecessary, is only a question which the statute itself can raise, and that the defendants have no right under the laws to interpose the issue as to whether the land was used or whether it was in fact necessary for railroad purposes; plaintiff objected further for the following reasons; first: It is not within the province of the jury to determine whether the property in question is necessary or not necessary for the use of the railroad company; second: That it is not within the province of the jury to determine whether under the franchises of the company the property is necessary, suitable or proper for the use of the railroad company. Third: That the evidence is wholly irrelevant and immaterial; plaintiff objected further to the question, because it does not confine the inquiry to the date that the railway company acquired its title under the deed of Brooks but leaves it unlimited so as to inquire as to the use of the property in controversy before the plaintiff obtained its deed.

State

382

The court overruled the objection, to which ruling of the court, the plaintiff, at the time, excepted.

A. You have reference to the property levied upon,—no sir.
Q. State the character of the use it has been put to since you knew it?

Plaintiff objected to the question for the reasons: First: It is not within the province of the jury to determine whether the property in question is necessary or not necessary for the use of the railroad company. Second: It is not within the province of the jury to determine whether under the franchises of the company the property is necessary, suitable or proper for the use of the railroad company. Third: That the evidence is wholly irrelevant and immaterial;

fourth: Because it does not confine the inquiry to the date that the railway company acquired its title under the deed of Brooks but leaves it unlimited so as to inquire as to the use of the prop-
383 erty in controversy before the plaintiff obtained its deed. And for the added reasons that defendants can not as to this plaintiff who took title to this property March 31st, 1897, go back of that date as to this plaintiff nor as to the Louisville, New Albany and Chicago Railway Company, go back of the Brooks' deed.

The court overruled the objection, to which ruling of the court, the plaintiff, at the time, excepted.

A. It is used by parties for storing corn and grain, by business men, general merchandise business, such as restaurants, groceries, and mercantile business, by men with offices for lumber yards; it has a building containing the post office, and has had for a number of years,—one or two elevators and used for general purposes, you might say, by the citizens,—blacksmith shop on it and lumber yard, and corn crib.

Q. Any barber shop on it?

A. Yes sir, a barber shop.

Q. What is the character of the buildings there, frame or brick?

A. They are frame,—one elevator is a frame building with a metallic outside of some kind.

Q. How is this ground situated with reference to the town of Francesville, as to being near the center?

A. It is, you might say, in the center of the town.

Q. Which is the principal business street?

A. Bill street, I would judge.

Q. Have you a plat of this ground?

A. No sir, I haven't an accurate plat; I had at the last trial and the reporter, Miss Decker, informed me it was here, but I don't find it among the papers; I have it in my mind, however, but no accurate plat.

384 Q. Where is this located with reference to the right of way of the railroad company, plaintiff?

A. It is immediately east of the right of way, west of Bill street, in the town of Francesville, and between Yellow street on the north running east and west, and Montgomery street, the first street south running east and west, and between Montgomery running east and west, and James street the second lot, and the third lot is between James street and Lyman avenue.

By Mr. KRETZINGER:

Q. Does your levy cover the whole of this one hundred and fifty feet described in the Brooks deed?

A. It does not.

By Judge WINFIELD:

Q. What part is not embraced?

A. The stock pens; no part that is used or ever been used by the railroad company was levied upon.

Q. Where is the depot with reference to this?

Plaintiff objected to the question, for the reasons first: It is not within the province of the jury to determine whether the property in question is necessary or not necessary for the use of the railroad company. Second: It is not within the province of the jury to determine whether under the franchises of the company the property is necessary, suitable or proper for the use of the railroad company. Third: Because it does not confine the inquiry to the date that the railway company acquired its title under the deed of Brooks, but leaves it unlimited so as to inquire as to the use of the property in controversy before the plaintiff obtained its deed.

The court overruled the objection, to which ruling of court, the plaintiff, at the time, excepted.

A. The depot is on the right of way, on the east fifty feet of
385 the right of way, in the center lot.

Q. Is the right of way fenced to indicate the width of it, any part near there so as to indicate the width of their right of way?

Plaintiff objected to the question, because it calls for a conclusion.

Q. Where is it fenced?

A. On the north lot there is a fence on the east line of the right of way and around particularly the north one hundred and ninety feet that was levied upon and was being used by Prewett and McMurray for storing corn and hay; it has a hay barn and three corn cribs on it.

Q. That fence you speak of enclosing the right of way, how wide is it there?

Plaintiff objected to the question, because the answer would be merely a conclusion.

Q. Assuming there is a right of way, suppose there is a right of way there, how wide is it from that fence across?

A. Fifty feet from the center of the track to each side, on the east side; the land levied on is all on the east side of the track; fifty feet from the center of the main track.

Q. What is the size of the town of Francesville, the population?

A. I would judge it as a town of six hundred to eight hundred people.

Q. What is the fact about this company leasing those grounds and for what purpose?

By Judge FIELD: You mean the present company, the plaintiff in this case?

By Judge WINFIELD: Yes, sir.

(By the WITNESS:)

A. I was over there a few days ago and had a talk with the parties.

Q. What do you know as a fact?

386 Plaintiff objected.

By Judge FIELD: Do you know in any other way than by conversation with people?

A. Yes sir, I saw the leases.

Plaintiff objected to the question, because the leases are the best evidence.

By Judge WINFIELD: Did you talk with the parties there in possession; who did you find in possession of the property—name the parties?

A. Prewett and McMurray are in possession of the north one hundred and ninety feet, north of the stock pens, and then the stock pens, which were not levied upon, is a little south of the center of that north lot, and immediately south of the stock pens is being used and occupied—this is fronting on Montgomery street, on the west end of the south end of that particular tract, or the sixty-six feet levied upon is used by Mr. Haymond for a grain elevator, and his scale there, a weighing scale, just east of the elevator; and the the next piece fronting on Montgomery street and the south end of the north lot contains a sort of store house for salt and such as that, used by Mr. Brewer, and adjoining it is the Brewer general store, groceries, merchandise of all kinds, and on the corner and immediately east of the Brewer store and adjoining the Brewer store is a building occupied by Wood Thrasher as an ice cream parlor, barber shop and restaurant; that takes up the entire space of the north lot; the part that was levied upon is the part that is being occupied by Prewett and McMurray for their grain and hay business and by Mr. Haymond for his warehouse, and Mr. Thrasher and Mr. Brewer in their store business.

Plaintiff objected to all this evidence, for the reasons, first:
387 It is not within the province of the jury to determine whether the property in question is necessary or not necessary for the use of the railway company. Second: It is not within the province of the jury to determine whether under the franchises of the company, the property is necessary, suitable or proper for the use of the railroad company. Third: Because it does not confine the inquiry to the date that the railroad company acquired its title under the deed of Brooks, but leaves it unlimited so as to inquire as to the use of the property in controversy before the plaintiff obtained its deed.

The court overruled the objection, to which ruling of the court, the plaintiff at the time, excepted.

Q. I will ask you if you talked with those parties in possession—Prewett and McMurray?

A. Yes, sir.

Q. What did they say as to how they held it—the character of their possession?

Plaintiff objected to the question, because it is hearsay evidence that is called for, any statement of theirs; declarations made by a party, not to the suit, respecting the character and use of the property are incompetent.

The court overruled the objection, to which ruling of the court, the plaintiff, at the time, excepted.

A. Yes sir, they were holding it through a lease from the Chicago, Indianapolis and Louisville Railway Company, or the plaintiff.

Plaintiff moved the court to strike out the answer, because it is a statement of a party as to the character of his possession, which appears to be under a written lease.

388 The court overruled the motion, to which ruling of the court, the plaintiff, at the time, excepted.

By Judge FIELD: Did he say he had a written lease?

A. Mr. Prewett did, and he showed me his lease.

Plaintiff moved the court again to strike out the answer of the witness, to wit: "They said they were holding it through a lease from the Chicago, Indianapolis and Louisville Railway Company, or the plaintiff," for the reason that it appears from the evidence that the character of the holding was under a written document.

The court overruled the motion, to which ruling of the court, the plaintiff, at the time, excepted.

By Judge WINFIELD:

Q. You may look at this map (handing witness a map to examine).

(It is admitted by the parties that this is a correct map and that the red lines on the map indicate the ground levied upon.)

Q. Upon the assumption that the railroad right of way is one hundred feet wide,——

A. I judge that is a correct map.

Q. Which is the north lot?

A. This is Yellow street running along the north side of the three lots that have been mentioned, and this enclosed by the red line at the extreme north end of these lots is a portion of the property levied upon; (indicating on map). On this ground is the hay barn that is now in the possession of Prewett and McMurray, at that point there, (indicating on map); then along in there are three corn cribs filled with corn, that are also used by Prewett and McMurray (indicating on map); then this open space here is the stocks pens;

that was not included in the levy; I might say at this point indicated on the map, is a hog pen and a pair of weighing scales
389 for hay and large loads; that is in the possession of John Coster; then comes the stock pens in that open space there; (indicating) that was not levied upon, from the railroad to the street.

Q. How long have those stock pens been there to your knowledge?

Plaintiff objected to the question, for the reason-, first: It is not within the province of the jury to determine whether the property in question is necessary or not necessary for the use of the railroad company. Second. It is not within the province of the jury to determine whether under the franchises of the company, the property is necessary, suitable or proper for the use of the railway company. Third: Because it does not confine the inquiry to the date that the railway company acquired its title under the deed of Brooks, but leaves it unlimited so as to inquire as to the use of the property in controversy before the plaintiff obtained its deed.

The court overruled the objection, to which ruling of the court, the plaintiff, at the time, excepted.

A. They have been there ever since I have known the town.

Q. About twenty years?

A. Yes sir, all of twenty, and more than twenty, I guess.

Q. Go on and describe the rest of it?

A. Here is the fence that I spoke of (indicating on plat) fifty feet, east of the center of the track, inclosing that part that Prewett and McMurray occupies.

Q. How near to the red line on the west there is the fence?

A. It would be on the red line.

Q. Inside of that fence, what is there there?

A. It is the railroad main track and the railroad side track.

Q. That fence you say is fifty feet from the center of the
390 track?

A. Fifty feet east from the center.

Q. Of the main track?

A. Yes sir, the enclosure in the red lines, south of the stock pens and north of Montgomery street and immediately adjoining Montgomery street is the second enclosure that I described in my testimony; it is being used by the several parties suggested; at the extreme west it is used by W. C. Haymond for his grain elevator, and in this little space there, (indicating on the plat) are his scales, or they were there up to a short time ago; I am not certain they are there now, but they were there when the levy was made, at least; and this is the salt bin that I spoke of—a little storehouse for salt and those things connected with a grocery store, not ordinarily kept in the store; it is being used by Mr. Brewer; then comes the Brewer store—this is the Brewer store, (indicating on plat), and there is a short space between the two buildings fronting on Montgomery street that extends clear out to Bill street and comes around

this little building which is occupied by Wood Thrasher, and they abut up against each other; I don't think they are eight inches apart; up here they meet (indicating), the two buildings, and that is the Wood Thrasher building in which he has a barber shop and ice cream parlor and a restaurant.

Q. You speak of Montgomery street south of the north lot; state whether that is an improved street?

A. Yes sir.

Q. How long has that street been there?

A. Ever since I have known the town—more than twenty years.

Q. Is it generally travelled?

A. It has been.

391 Q. How are these buildings situated with reference to fronting on that street?

A. They front on Montgomery street.

Q. Take it across the railroad, what is on the corner of lot sixty, as contained on this map?

A. It is on lot one in block fifteen,—the hotel building.

Q. Which way does that face?

A. It faces this street, or the railroad; it faces east.

Q. Now pass to the middle lot there, the one south of Montgomery street and describe what is on that?

A. That is the enclosure in the red line, indicating the part levied upon; that extends from Bill street west one hundred twenty feet to that point (indicating on map) and upon this enclosure that was levied upon, we first have an office, a grain office that is used by Prewett and McMurray.

Q. What is there immediately west of that?

A. Immediately west of it, there was at the time we made the levy, a little band stand, but that has been torn down since; there is sheds and lumber up to a little road between this point (indicating on map) and the part levied upon.

Q. Which way does that office front?

A. It fronts on Bill street, fronts east: all of those buildings are fronting east, (indicating on plat).

Q. What is the next building to Prewett's office?

A. The next building is the post office.

Q. That is not indicated on this map?

A. No sir, it is not; the post office faces east; all the building on this particular tract here (indicating on plat) face east on Bill street; and next to the post office I believe is an office used by Mr. Shellenbarger, a lumber office—his private office—and next to his office is the lumber shed, Mr. Shellenbarger's lumber shed, occupied and used by him for storing his better grade of lumber.

392 Q. How far does his lumber shed and the lumber extend back?

A. It extends back to the west line of the part levied upon.

Q. How long has it been there, if you know?

A. Mr. Shallenbarger hasn't been there very long; I have known

him two or three years, I judge, at least, and probably five years; I wouldn't say certain, but he has been there at least three years.

—. Did you talk with him?

A. Yes sir.

Q. How did he say he was holding there?

Plaintiff objected to the question.

Q. What did he say with reference to his possession—how he was holding possession?

Plaintiff objected to the question, on the ground that it is calling for hearsay evidence, and not binding upon the plaintiff in this cause.

The court sustained the objection, to which ruling of the court, the defendants at the time, excepted.

Q. Did you find him there on the ground when you were there last?

A. Yes sir.

Q. What did he say there as to how he was there or why he was there?

Plaintiff objected to the question on the ground that it is calling for merely hearsay evidence,

The court overruled the objection, to which ruling of the court, the plaintiff, at the time, excepted.

A. He said that he had leased it from the plaintiff in this case the railroad company.

Q. Next south from Mr. Shellenbarger's office, what is there?

A. I believe that is the blacksmith shop, the Nelson blacksmith shop, a rude shed used by him in the blacksmith busi-
393 ness.

Q. How long has that been there?

A. I judge that it has been there three to five years—maybe longer—all of five I would say.

Q. Does he carry on the business of blacksmithing?

A. Yes sir.

By Judge WINFIELD: I will have to modify the admission that this is an accurate map of the location; I see it is not an accurate map as to the location of buildings.

Q. What is there on the lot next south of that?

A. The balance of that part that we are describing here of the middle lot that was levied upon is occupied by Joseph Myers & Son; next and a short distance from the Nelson blacksmith shop, fronting on Bill street, they have a private office; then immediately south of their office is a couple of corn cribs, quite lengthy corn cribs filled with corn; and then immediately back of the corn cribs is an elevator in the southwest corner of this tract that was levied upon—a grain elevator.

Q. Used by them in their business?
A. Yes sir, used by them in their business.
Q. Did you see them there when you were there?
A. Yes sir, I saw them.
Q. Did you find them there in possession?
A. Yes sir.
Q. What did he say as to his possession when you found him there?

Plaintiff objected to the question on the ground that it is calling for hearsay evidence.

The court overruled the objection, to which ruling of the court, the plaintiff, at the time, excepted.

A. He said he was there under a lease from the plaintiff,
394 the railway company.
Q. Go on now.
A. I might suggest in addition to that and scattered over the south end, the space that is not covered particularly by buildings, you find a little of everything; there is some old threshing machines, and engines and things of that kind—not railroad engines, but threshing machine engines—complete outfits there.
Q. I will ask you if all of that middle lot at the time of the levy and up to the present time, is embraced in that,—the land levied on was occupied and used for private purposes.

Plaintiff objected to the question, because it embodies simply a conclusion, and as to private purposes, that depends on the character of use.

The court sustained the objection, to which ruling of the court, the defendants, at the time, excepted.

Q. What, if any part, of that middle lot has been used by the railroad, within your recollection, for railroad purposes?

Plaintiff objected to the question, on the ground that whether it is used or not is wholly immaterial; that the title of the plaintiff is in no sense dependent upon the question as to whether the property was actually used or not, and because if it is used by the public, in reaching the depot or any of the buildings on the track or side track or merchandise track of the common carrier, that constitutes use.

The court overruled the objection, to which ruling of the court, the plaintiff, at the time, excepted.

A. It has not; it has been used just as I have described it here;
there is a drive-way between this and the side track to the
395 depot (indicating on the plat), that is used there for loading
and unloading and hauling lumber, but that drive-way is west and outside of the ground that was levied upon; the balance has been used just as I have described it.

Q. Describe how, since your recollection, the depot has been reached by the public—what route has been used?

A. The depot would be reached from either end; it is open from this street south to the depot (indicating on the plat); that is an open space there on the right of way, and getting to and from the depot with loads and unloading is by that alley that I described between this ground and the depot grounds or the side track (indicating on plat).

Q. Is there a well defined track there leading up to the depot, outside of the grounds levied upon?

A. There is; there is no way leading to the depot over the grounds that was levied upon that is used by anybody for the purpose of getting to the depot or the railroad, or any business connected with the railroad company.

Q. I see marked on the map, James street; describe that and state whether or not that is an improved street?

A. James street is a street that is travelled, but it is not improved; it is a street that has been used and travelled but there is no particular improvement on it. When I spoke of Montgomery street being improved, that has been improved by ordinance as I understand it; it is a gravel road.

Q. James street has not been gravelled?

A. No sir.

Q. But is used and travelled by the public?

A. Yes sir.

Q. State what is west of that grain elevator down there?

A. That is the right of way of the railroad company—the depot, the side track, and the alley-way immediately east of the side track.

396 Q. Is there any part of the lay-out of the road upon this middle lot levied upon?

Plaintiff objected to the question on the ground that it is a mere conclusion; it is not for the witness to say what the lay-out of the road is.

The court sustained the objection, to which ruling of the court, the defendants, at the time, excepted.

Q. Was there any part of the railroad track, depot or any other within that red line on the middle lot?

A. No sir.

Q. Passing to the south of James street, what is there on that south lot?

A. The plat in that respect is deficient also; it properly lines the grain elevator upon it but does not show the buildings.

Q. State what buildings are on it?

A. Pretty well to the north-west corner of this tract is an office that is occupied by Whittaker—I believe his name is Whittaker; a little south and east of that—south of it, it is, and extending a little east of that is the Whittaker bins or cribs for storing of corn, and

they have a corn sheller and an outfit of that kind; and over at about that point in the northeast corner (indicating on the plat) probably forty or fifty feet south of the north line of this, and pretty well up to the east line is a large corn crib that is owned and occupied and used by this man Whittaker; then at the time we levied upon it, it was dotted over pretty much by tile; I don't know who had the tile there; it was tile scattered promiscuously over the lot levied upon; and there is now a stone crusher outfit standing there; I don't known who that belongs to.

Q. Is there anything else on the south lot levied on?

397 A. Not that I recall.

Q. What is there south of the south lot?

A. Lyman avenue, that is the street south.

Q. Is that a street travelled by the public?

A. It is and has been ever since I have known the town.

Q. Has it been improved any?

A. It has not; they are hauling some dirt from the street but it has not been improved.

Q. What buildings besides this depot and the cattle-pens have the railroad company on the right of way there?

A. They have, I presume you would call it, a tool or car-house; it is an old box car.

Q. Is that on the right of way?

A. Yes sir, that is on the right of way.

Q. None of it on this ground?

A. None of it.

Q. Do you know the line of the road of the plaintiff, where it starts from, coming from the north?

A. From Michigan City.

Q. Where does it run to—where does it run south?

A. From Michigan City to Monon, on south to Indianapolis and to New Albany.

Q. At Monon, what do you know about its crossing the Indianapolis and Chicago line?

A. It does—it rather unites with it there; they join there.

Q. Where are the shops of the road?

A. I couldn't say as to that; there are some shops at Monon, I know that.

Q. What do you know about the shops at La Fayette?

A. I don't know much about that; I never had any occasion to.

398 Cross examination:

Questions by Judge FIELD, of counsel for the plaintiff:

Q. Are you one of the attorneys in this case?

A. Yes sir.

Q. And have been from its first commencement?

A. Yes sir, in this case; I was not an attorney—I was not con-

nected with the original action wherein the Maguire's judgment was obtained.

Q. In this action for quieting title, and injunction, you have been in it from the start as attorney for the defendants, and since the sale, in a sense, somewhat, an attorney for yourself?

A. Yes sir.

Q. You were present at the discussion of the issues before Judge Beeman at Knox, in Starke county, when an application for a temporary restraining order was involved?

A. Yes sir.

Q. You were well advised of all of the facts and the claims then made and since made up to the time of the sale of the railroad?

A. Just as presented.

Q. At the time you bought at the sheriff's sale you knew what the contention of the railroad company was?

A. Yes sir, practically so.

Q. With reference to this property down here that you have described on the plaintiff's map, have any of those buildings been erected since February 20th, 1896?

A. I don't think they have.

Q. They were all there prior to that time?

A. Yes sir.

Q. The uses that have been made of them since is the same as that that was made before?

399 A. Practically the same, yes sir.

Q. And the tenants occupying since February 20th., 1896, are substantially the tenants who were in occupancy before that date?

A. I believe they are the same ones; possibly that man Whittaker—I wouldn't say sure as to that.

Q. Speaking of the fence at the north end where the hay barn is, the hay barn next to the railroad track, marked Calvert hay barn?

A. Yes sir, Mr. Calvert used to occupy it.

Q. He was the original party?

A. Yes sir.

Q. The fence you spoke of, started at what point?

A. It started at the north west corner of the ground levied upon; I would say practically at a point fifty feet east of the center of the main track, and on the south line of Yellow street.

Q. And went south how far?

A. It went south about a hundred and sixty-five or a hundred and seventy feet I would judge.

Q. And east how far?

A. I don't believe there was any fence east.

Q. On the south line?

A. I don't think so; I wouldn't say certain, but if there was it is burned up; I don't think there is.

Q. Take it on the north line running east from the starting point, is there a fence there?

A. Yes sir, a wire fence, practically to the west line of Bill street.
Q. Is there any fence running to the south?
A. I believe there is.
Q. How far?
400 A. About the same distance as the west line.
Q. Wasn't that fence constructed by the party at the time to enclose the lot?
A. I couldn't say; I presume it was; it had that appearance.
Q. That was the only fence there was there, or that you observed there?
A. I believe it is the only fence.
Q. You and the sheriff undertook to determine by making your levy, what part of this was necessary for the railroad and what part was not, did you not?
A. I wouldn't say that we did.
Q. How did you come to leave out the stock pens and all the lands east of that up to Bill street?
A. It was being used by the railroad company.
Q. The stock pens didn't occupy all of it?
A. The stock pens and the entrance to the street did.
Q. You thought that was necessary for railroad purposes? Is that the reason you didn't make a levy upon it?
A. Yes sir.
Q. And that runs clear to east Bill street?
A. Yes sir, we didn't interfere with any getting to the stock pens.
Q. You and the sheriff determined that: no one else helped you; the railroad company wasn't a party to it?
A. No sir.
Q. You went down and determined that this strip of lands running where the stock pens are east to Bill street was necessary for railroad purposes and therefore ought not to be levied upon?
A. Yes sir.
Q. If you had concluded it was not necessary for railroad
401 purposes you wouldn't have made the jog, would you—you would have made it solid?
A. I wouldn't permit the sheriff to levy on anything that the railroad company was using.
Q. Or that you thought was necessary for railroad purposes, ain't that it?
A. No sir, I would put it like I put it—that the railroad company was using.
Q. What I want to get at, there is the stock pens and here is the railroad track, (indicating on the plat) and the side track and the stock pens, and here is a strip to Bill street, (indicating on plat) that you didn't include because you thought that was necessary for railroad purposes?
A. Yes sir, it shows on its face.
Q. That comes down to Bill street?
A. Yes sir.

—. Take the piece that covers what was originally the Haymond feed and lumber buildings, that runs down to within a very few feet of the side track, the levy does?

A. Yes sir, it is some,—I would judge it is seven feet from the sidetrack.

—. The levy there comes down to within seven feet of the side track?

A. Seven or eight feet.

Q. Is there any way of getting through between the sidetrack to the land you have designated as land levied on at the west?

A. The Haymond building occupies that space.

Q. They couldn't get through there without driving along lengthwise of the side track?

A. No sir, the building occupies this space.

Q. Does the building come clear down to within six or seven feet of the side track?

402 A. Yes sir, I would judge that it does.

Q. What was that building used for down at the side track?

A. It is an elevator; I don't believe it was an elevator at the time we levied on it; it is used for grain—in the grain business.

Q. Receiving grain from the cars and discharging grain to the cars?

A. In the usual and ordinary line of business by a man engaged in that business.

Q. Connected with the business of the railroad in shipping and receiving?

A. Naturally—and selling to the public; he sold to the public as well.

Q. How many years has that been used to your knowle-ge, in that way?

A. I believe that has been there ever since I knew the town.

Q. Twenty years or more?

A. Yes sir, I would judge so.

Q. When you got still further south you shortened the width of the piece of land levied on by somewhere in the neighborhood of fifty feet,—the east and west line?

A. Yes sir.

Q. What was the occasion of shortening up that line?

A. There was a driveway there that was used to get in to the side track I would judge.

Q. And on the line you have indicated in the levy, how much space is there between the west line of the levy at this point—the lot right east of the depot, (indicating on plat)?

A. It is between Montgomery and James street.

Q. How much space is there between the line designated in your levy, the west line, to the side track?

403 A. About fourteen feet; it is a good width of a driveway; I didn't include any part of that.

Q. How far is the west line of this piece that you levied on from the main track?

A. That would make it about eighty feet, I would judge from the center of the main track—from eighty to eighty five feet.

Q. And then going further south to the last piece, the northwest corner of your description contained in the levy, that comes right to the Prewett grain crib?

A. No it isn't the Prewett grain crib; that is that Whittaker—whatever his name is.

Q. Did you ever know Mr. Prewett?

A. Yes sir, I know Mr. Prewett, and I think probably Mr. Prewett could have used that in days gone by, but Mr. Whittaker uses it now.

Q. At that point how close did you go to the side track with your levy?

A. It is quite a distance.

Q. Have you ever made the measurement?

A. No sir, I never made the measurement; the side track there is drawn in pretty close to the main track.

Q. These irregular pieces described here in red lines,—these are the pieces that you and the sheriff deemed were unnecessary for railroad purposes?

A. Yes sir, they were the parts of that land that was being used for the business that I have described heretofore.

Q. Just answer the question; isn't it a fact that you and the sheriff determined those were unnecessary for railroad purposes?

A. Yes sir, there is no doubt about that.

By Judge WINFIELD:—

404 Q. You were asked on cross examination about if you at the time deemed them unnecessary for railroad purposes; I will ask you if at the time—what you thought about whether there would be any necessity of using any of this ground for railroad purposes?

Plaintiff objected to the question.

The court sustained the objection.

By Judge FIELD: The plaintiff will not dispute this state of facts on this question by witnesses, and will not put any witness on the stand on this question, because Mr. Hathaway has stated these locations, and we will dismiss our witnesses on that question.

Defendants offered in evidence the plat or map prepared by the plaintiff and used in the examination of the witness Medary Hathaway in identifying the location of buildings, etc.

(Identified by the reporter as Exhibit T.)

And the said map being then given in evidence and exhibited to the jury was the same that appears on the following page of this transcript.

(Here follows diagram marked page 404*a*.)

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Evidence — E. H. Applegate.

EDMUND H. APPLEGATE a witness called on behalf of the defendants, after being first duly sworn, testified as follows, to-wit:

Examination in chief.

Questions by Judge WINFIELD, of counsel for the defendants:

Q. State your name to the court and jury?
A. Edmund H. Applegate.
Q. Where do you live?
A. At Francesville, Indiana.
Q. How long have you lived there?
A. Over twenty years in Francesville.
Q. What has been your business?
A. I keep a general store.
405 Q. Are you acquainted with this ground that was levied upon by the sheriff on an execution against the Monon road?
A. Yes sir, I think I know the parts that they levied on; I helped measure the ground.
Q. During the whole time you have lived at Francesville, have you ever known any part of this ground to be used by the railroad?

Plaintiff objected to the question, because it goes back to twenty years, and that is the time that Mr. Hathaway answered with respect to; the plaintiff will not put a witness on the stand on the subject.

By Judge WINFIELD: You will not attempt to dispute the fact?

By Mr. KRETZINGER: We will put no witness on the stand on the subject.

Defendants here rested their case.

Rebuttal—Lease of L., N. A. & C. to J. H. Prewett.

Plaintiff offered in evidence, in rebuttal, the lease of the Louisville, New Albany & Chicago Railway Company to John H. Prewett for the property at Francesville (Identified by the reporter as Exhibit R.)

Defendants objected to the introduction of this lease, because it is made in 1893, before the old company acquired title.

The court overruled the objection, to which ruling of the court, the defendants at the time, excepted, and the said lease being then read and given in evidence was in the words and figures following o-wit:

Exhibit R.

"This indenture, made this 18th day of April 1893 between The Louisville, New Albany & Chicago Railway Company, of the first part, and J. H. Prewett of Francesville, Pulaski county, Indi-
406 ana. of the second part, witnesseth, that said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part hereinafter contained, hereby leases unto said party of the second part the following described real estate, to-wit:

Commencing at the southwest corner of Bill and Montgomery streets in the town of Francesville Indiana, thence southerly along the west line of said Bill sixty (60) feet thence westerly at right angles one hundred and fifteen (115) feet thence northerly parallel to said Bill street sixty (60) feet to, the south line of Montgomery street thence easterly along said south line of Montgomery street one hundred and fifteen (115) feet to the place of beginning.

And unless said railway company shall deem it necessary to use said ground, above described, for its own purposes, this lease shall continue *and* for the term of one year commencing on the 18th day April 1893, and ending on the 17th day of April 1894, and said premises, with the appurtenances, are to be occupied and used for the purpose of a grain house lumber sheds and office and for no other purposes.

In consideration of the premises, said party of the second part hereby covenants and agrees to occupy said premises in a careful, tenant-like manner, and to pay to said party of the first part for the rent thereof, without relief from val-ation or appraisement laws, the sum of one and $\frac{25}{100}$ dollars, per month payable monthly in advance, and to release said railway company from all damages by fire and other causes.

If, during the term aforesaid, or at any time thereafter, said company shall deem it necessary to use said ground for its own purposes, as above stated, then and in that event, upon giving to said
407 J. H. Prewett sixty days' notice of its intention so to do, it may take immediate and peaceful possession of said premises which possession J. H. Prewett hereby agrees to surrender to said railway company, and said party of the second part further agrees not to use said premises for any other purpose or purposes than those above set forth.

And also to surrender the premises at the end of said term, or the expiration of this lease, to the said party of the first part without notice, in as good condition as they now are, natural wear and decay and unavoidable accidents excepted; and in case of destruction of said property by fire this agreement to be at an end; and the said party of the second part further agrees not to sub-lease said premises or assign or transfer this lease or any part thereof, without the written consent of the party of the first part first obtained.

It is hereby understood and agreed, that if said party of the second part shall violate any of the agreements herein-contained, or if any part of said rent shall be in arrears ten days, that this lease shall be forfeited, and said party of the first part shall be entitled to the immediate and peaceable possession of the premises without notice.

It is further agreed that if the lessee shall, without objection from the lessor, continue to occupy the premises after the expiration of the aforesaid term, the provisions of this lease, so far as applicable, shall thereafter govern the rights and duties of the respective parties, except as to the time of such occupancy, and that said company may — any time terminate all the rights of the other hereunder by giving sixty days' notice.

In witness whereof, the parties have hereunto set their hands and seal-, the day and year first above written.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,
By W. H. McDOEL, *General Manager.* [L. S.]
408 JOHN H. PREWETT. [L. S.]

STATE OF INDIANA, }
County of ——, } *ss:*

Before me —— —— a — in and for said county and State, personally came the within-named lessor and lessee, and acknowledged the execution of the foregoing lease.

Witness my hand and — seal, this — day of —— 188–.

—— ——.

I hereby acknowledge myself security for the performance of the covenants and conditions contained in the within lease on the part of the lessee.

—— ——.

(Endorsed on back:) Lease. (Short form) The Louisville, New Albany & Chicago Ry. Co. to J. H. Prewett Francesville. Received for record this 18th day of April A. D. 1893, at — o'clock — m., and recorded in Record — page —. —— —— recorder for —— county.

409 *Lease of C., I. & L. Ry. Co. to Jacob Myers.*

Plaintiff offered in evidence in rebuttal the lease of the plaintiff company to Jacob Myers, for the property at Francesville. (Identified by the reporter as Exhibit S.)

And the said lease being then read and given in evidence was in the words and figures following, to-wit:

EXHIBIT S.

"This indenture, made this 1st day of July 1897 between the Chicago, Indianapolis & Louisville Railway Co., of the first part, and Jacob Myers of Francesville, Pulaski county, Indiana, of the second part, witnesseth, that said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part hereinafter -ontained, hereby leases unto said party of the second part the following described real estate, to-wit: A piece of land at Francesville, Pulaski county, Indiana described as follows. Beginning at the northwest corner of the intersection of James and Bill streets Francesville thence north on the west line of Bill St. a distance of ninety (90) ft.: thence west to within ten (10) feet east of the center line of the said track of the Chicago, Indianapolis & Louisville Ry. Co. as now located, thence southerly parallel to said center line to the north line of James St. thence east on north line James St. to place of beginning.

And unless said railway company shall deem it necessary to the said ground above described, for its own purposes, this lease shall continue during and for the term of five years commencing on the 1st day of July, 1897 and ending on the 30th day of June, 1902, and said premises with the appurtenances, are to be occupied and used for the purpose of erecting and maintaining an elevator and storing grain, hay &c. and for no other purposes.

In consideration of the premises, said party of the second
410 part hereby covenants and agrees to occupy said premises in a careful, tenant-like manner, and to pay to said party of the first part for the rent thereof, without relief from valuation or appraisement laws, the sum of five ($5.00) dollars, annually payable in advance and releasing said Ry. from all losses resulting from fires or other causes.

If, during the term aforesaid, or at any time thereafter said company shall deem it necessary to use said ground for its own purposes, as above stated, then and in that event, upon giving to said Jacob Myers ninety (90) days' notice of its intention so to do, it may take immediate and peaceful possession of said premises, which possession said Jacob Myers hereby agrees to surrender to said Ry. company. And said party of the second part further agrees not to use said premises for any other purpose or purposes than those above set forth.

And also to surrender the premises at the end of said term, or the expiration of this lease, to the said party of the first part, without notice, in as good condition as they now are, natural wear and decay and unavoidable accidents excepted; and in case of destruction of said property by fire this agreement to be at an end; and the said party of the second part further agrees not to sub-lease said premises, or assign or transfer this lease or any part thereof, without the written consent of the party of the first part first obtained.

It is hereby understood and agreed, that if said party of the second part shall violate any of the agreements herein contained, or if any part of said rent shall be in arrears ten days, that this lease shall be forfeited, and said party of the first part shall be entitled to the immediate and peaceable possession of the premises without notice.

411 It is further agreed that if the lessee shall, without objection from the lessor, continue to occupy the premises after the expiration of the aforesaid term, the provisions of this lease so far as applicable, shall thereafter govern the rights and duties of the respective parties, except as to the time of such occupancy, and that the said company may at any time terminate all the rights of the other hereunder by giving ninety (90) days' notice.

In witness whereof, the parties have hereunto set their hands and seals, the day and year first above written.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY CO.,
By W. H. McDOEL, [L. S.]
Vice-Pres't & Gen'l Mangr.
JACOB MYERS. [L. S.]

STATE OF INDIANA, } ss:
County of ——, }

Before me —— —— a — in and for said county and State, personally came the within named lessor and lessee, and acknowledged the execution of the foregoing lease.

Witness my hand and — seal, this — day of —— 189–.

—— ——,
—— ——.

I hereby acknowledge myself security for the performance of the covenants and conditions contained in the within lease on the part of the lessee.

—— ——.

412 (*Em*dorsed on the back:) Lease. (Short form.) Chicago, Indianapolis & Louisville Railway Co. to Jacob Myers. Francesville Received for record this, 1st day of July A. D. 1897, at — o'clock — m., and recorded in record — page — —— —— recorder for —— county.

Plaintiff moved the court separately to strike out the return of the sheriff to the execution in the case of Patrick Maguire *versus* The Louisville, New Albany and Chicago Railway Company, and also to strike out from the evidence the deed of the sheriff under that levy and notice, for the reason that the description in both is so uncertain as to constitute an invalid conveyance. The court overruled

the motion, to which ruling of the court, the plaintiff at the time, excepted.

Plaintiff here rested its case.

Defendants here rested their case, and this was all the evidence given in the cause.

413 *Certificate of Reporter to Transcript.*

STATE OF INDIANA, }
White County, } ss:

White Circuit Court, April Term, 1899.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY }
vs.
PATRICK MAGUIRE ET AL. }

I, Lucy S. Taylor, official shorthand reporter of the White circuit court of the State of Indiana, do hereby certify that I am the official shorthand reporter of said court, duly appointed and sworn to report in shorthand the evidence of the causes, tried therein; that as such shorthand reporter, I took down in shorthand, in the above entitled cause, a full, true and complete report of all the evidence given and offered by the parties in said cause, and of the objections thereto, the rulings of the court thereon, and of the exceptions thereto; and I do further certify that the above and foregoing typewritten manuscript is a full, true and complete copy of the shorthand report of said evidence, the objections thereto, rulings of the court thereon, and of the exceptions, together with a full, true and complete copy of each and every written instrument read and given in evidence, and that said typewritten manuscript of said shorthand report of said evidence contains all the evidence given in said cause.

Witness my hand this 19th day of June 1899.

LUCY S. TAYLOR,
Official Shorthand Reporter.

414 *Transcript Filed.*

STATE OF INDIANA, }
White County, } ss:

White Circuit Court, April Term, 1899.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY }
vs.
PATRICK MAGUIRE ET AL. }

I, F. B. Humston, clerk of the White circuit court of the State of Indiana, do hereby certify that on the 6th day of July 1899, Lucy

S. Taylor official shorthand reporter of said court, filed in my office at the request and for the use of the plaintiff in the above entitled cause, the foregoing original typewritten manuscript of the evidence given in said cause as taken and certified by said official shorthand reporter of said court.

Witness my hand and the seal of said court, this 6th day of July, 1899.

F. B. HUMSTON,
Clerk White Circuit Court.

415 *Certificate of Judge.*

I, James V. Kent, special judge of the White circuit court of the State of Indiana in the cause of The Chicago Indianapolis and Louisville Railway Company *vs.* Patrick Maguire, Medary M. Hathaway, Philip Dellinger, sheriff of Pulaski county, Indiana, No. 902, do hereby certify that the above and foregoing long-hand transcript of the evidence and proceedings in said cause, made by Lucy S. Taylor, the official reporter of said court, is correct and contains all the evidence in said cause.

JAMES V. KENT,
Special Judge of the White Circuit Court of Indiana.

416 And be it further remembered that afterwards, on the 7th day of July, 1899, the plaintiff tenders to the court this its bill of exceptions in said cause and prays that the same may be approved, signed sealed and filed and made a part of the record in said cause.

JAMES V. KENT,
Special Judge of the White Circuit Court of Indiana.

Certificate of Judge.

And be it further remembered that after having so taken the said bill of exceptions under advisement and having examined the same and found the same to be correct and that the same contains all the evidence given in said cause, the said bill of exceptions is now this 10th day of July 1899, approved, signed sealed by me and ordered filed and made a part of the record in said cause.

JAMES V. KENT,
Special Judge of the White Circuit Court of the State of Indiana.

417 STATE OF INDIANA, }
White County, } *ss:*

I, Samuel L. Callaway, clerk of the White circuit court of Indiana, do hereby certify that the above and aforegoing transcript contains true and complete copies of all the papers and entries in said cause.

I further certify that on the 6th day of July 1899 Lucy S. Taylor, the official reporter of said court who took down the evidence in said cause, filed in my office her long hand manuscript of the evidence in said cause; that on the 10th day of July, 1899, James V. Kent, special judge of said court in said cause, attached to the said transcript, his certificate that the said transcript is correct and contains all the evidence in said cause; that the said transcript and certificate was incorporated into a bill of exceptions, which bill of exceptions was filed in my office on the 12th day of July 1899.

I further certify that I have incorporated in the above and foregoing transcript, the said original transcript of the evidence which is the same transcript which was filed in my office by the said official reporter and that the certificate of the said special judge attached to said reporter's transcript and incorporated herein is the original certificate attached to said transcript by James V. Kent, the special judge of said court in said cause.

I further certify that the said bill of exceptions containing the evidence in said cause so filed in my office on the 12th day of July 1899, is incorporated in the above and foregoing transcript without copying and that it is the same bill of exceptions which was so filed in my office as aforesaid.

418 In witness whereof, I have hereunto set my hand and the seal of the said White circuit court of Indiana this 8th day of August, A. D. 1899.

[SEAL.] SAM. L. CALLOWAY,
Clerk of the White Circuit Court of Indiana.

419 In the Supreme Court of Indiana.

CHICAGO, INDIANAPOLIS AND LOUISVILLE Railway Company, Appellant, *vs.* PATRICK MCGUIRE, M. M. HATHAWAY, and Phillip Dellinger, Sherrif- of Pulaski County, Indiana, Appellees.	Assignment of Errors. Filed Aug. 12, 1899. R. A. Brown, Clerk.

The appellant avers that there is manifest — in the judgement and proceedings in this cause, in this:

First. The court erred in sustaining the appellees' motion for a new trial as of right.

Second. The court erred in directing the jury to return a verdict in favor of appellees.

Third. The court erred in ordering appellant — make its second paragraph of amended complaint more specific.

Fourth. The court erred in striking out the second paragraph of appellant's amended complaint.

Fifth. The court erred in over-ruling appellant's motion for a new trial.

Wherefore appellant prays that the judgement be reversed.

E. C. FIELD,
G. W. KRETZINGER,
W. S. KINNAN, AND
SELLERS & UHL,
Attorneys for Appellant.

420 And afterwards, to-wit: on the 11th day of September, 1899, the same being the 98th judicial day of the May term 1899 of said court, the following further pleas and proceedings were had in said cause, to-wit:

Come now the parties, by their counsel, and this cause is submitted to the court for judgment and decree, as provided by the act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said supreme court adopted in relation thereto.

And afterwards, to-wit: on November 6, 1899, comes the appellant, by counsel, and files its brief (7) herein.

And afterwards, to-wit: on May 24, 1900, come the appellees by counsel, and file their motion to dismiss the appeal herein, and file proof of their notice to opposing counsel.

And afterwards, to-wit: on May 31, 1900, comes the appellant, by counsel, and files its answer to appellees' motion to dismiss the appeal herein.

And on the same day, comes the appellant, by counsel, and files its application for leave to amend the assignment of errors herein.

And afterwards, to-wit: on June 5, 1900, come the appellees, by counsel, and file their reply brief on motion to dismiss the appeal herein.

421 And afterwards, to-wit: on June 6, 1900, the same being the 9th judicial day of the May term, 1900, of said supreme court, come the parties by counsel, and the court being advised in the premises, overrules appellees' motion to dismiss the appeal herein.

And afterwards, to-wit; on June 30, 1900, come the appellees, by counsel, and file their brief (6) herein.

And afterwards, to-wit: on August 28, 1900, comes the appellant, by counsel, and files its reply brief (7) herein.

And afterwards, to-wit: on March 25, 1901, come the appellees, by counsel, and file their petition for an oral argument in said cause.

And afterwards, to-wit: on March 28, 1901, the same being the 106th judicial day of the November term 1900, of said supreme court, come the parties, by counsel, and the court being advised in the premises, transfers the above entitled cause to the appellate court for decision, which said cause is now numbered 3780 of said appellate court.

And afterwards, to-wit: on January 7, 1902, the said appellate court being advised in the premises, sets the said cause for oral argument on February 4, 1902, and seven notices are issued to counsel in said cause.

422 And afterwards, to-wit: on January 7, 1903, the same being the 39th judicial day of the November term 1902 of said appellate court, come the parties by counsel, and the court being advised in the premises, affirms the judgment of the court below with the following opinion pronounced herein by Henley, J.: (here insert).

423 HENLEY, *J.*:

This was an action commenced by appellant to quiet its title to a certain parcel of land situated in Pulaski county, Ind. The cause was tried by a jury. After the evidence was concluded the trial judge instructed the jury to return a verdict for appellees. The question presented here arises upon the motion for a new trial, and questions the action of the trial court in so instructing the jury. The facts upon which the instruction was based are not in dispute. Both appellants and appellees claim title through the Louisville, New Albany & Chicago Railway Company. Appellant claims title through certain mortgages given by the Louisville, New Albany & Chicago Railway Company which were foreclosed in the United States circuit court for the district of Indiana, and through which foreclosure, and other conveyances following it, its title became vested. Appellee's title is claimed as follows: On the 24th day of September, 1896, the appellee Patrick McGuire recovered judgment in the White circuit court of Indiana against the Louisville, New Albany & Chicago Railway Company for $2,416.23 and costs. On the 16th day of October, 1897, the said McGuire caused an execution to be issued by the clerk of the White circuit court to the sheriff of Pulaski county. On the 18th day of October, 1897, the said sheriff levied the execution upon the real estate in dispute. On the 13th day of November, 1897, the sheriff sold this real estate at public sale, and the appellee Hathaway became its purchaser, and on the 23d day of November, 1898, the sheriff of Pulaski county executed

to him a deed. A transcript of the McGuire judgment had been filed in the Pulaski circuit court on the 28th of January, 1897.

It is contended by appellant that the real estate in controversy is a part of its depot grounds at Francesville, Ind., and that the foreclosure and sale of the property of the Louisville, New Albany & Chicago Railway Company, through which foreclosure and sale appellant obtained whatever title it may have in the disputed premises, carried with it the title to said disputed premises. The judgment of McGuire against the Louisville, New Albany & Chicago Railway Company was obtained after the execution of the foreclosed mortgages through which appellant claims title. The contention of counsel for appellees is that the disputed property was not embraced within the mortgages and foreclosure, and that the same was not covered by the clause inserted in each mortgage intended to cover after-acquired property, and therefore could not have been embraced within the foreclosure and sale under the proceedings in the United States court. An abstract question of law is therefore presented, as to whether or not the property in dispute passed by the foreclosure and sale. There were three mortgages executed by the Louisville, New Albany & Chicago Railway Company,—one in 1886, one in 1890, and one in 1894; all being prior to the rendition of the McGuire judgment. In the mortgage of 1886 the description of after-acquired property is as follows: "Which may at any time hereafter during the continuance of this trust be acquired by the said railroad company for purposes connected with or appertaining to the railroad or railways above mentioned or described." The description of the after-acquired property in the mortgage executed in 1890 was in the following words: "And all that it may in the future add, construct, or acquire for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described." The description of the after-acquired property in the mortgage executed in 1894 was in the following words: "What may at any time before or after the date of this indenture be acquired by or for the said railway company for purposes connected with or appertaining to said railroads or railways hereby conveyed." The decree directing the sale of the Louisville, New Albany & Chicago Railway Company follows the description in the mortgage. The master's deed conveying the property does not vary the description as to after-acquired property. The property in dispute was properly acquired by the Louisville, New Albany & Chicago Railway Company after the execution of the above-described mortgages. The trial court determined that the undisputed evidence established that the land levied upon and sold to satisfy appellee's judgment was not used by appellant for railroad purposes; that it was not needed for such purposes, and that it was not properly a part of the "lay-out" of the road; and that therefore the clauses in the mortgages covering after-acquired property did not cover the property in dispute. The evidence shows that the particular parcel of land in dispute has never been used by the railroad company for railroad purposes;

that, while it is contiguous to and adjacent to the depot grounds of appellant, it has buildings located upon it which have been leased to different parties, and occupied and used as a barber shop, grocery, post office, and in other ways entirely foreign to the necessary means of operating the railroad.

In speaking of the property covered by the after-acquired clause in a mortgage given by a railway company, Mr. Short, in his excellent work on the Law of Railway Bonds and Mortgages, at section 209, says: "The lien will be confined to the lands which were prospectively necessary and convenient for the construction and future operation of the road, and will not embrace lands situated outside of the 'lay-out' of the road, which had been taken over by the company in order to acquire at a less cost the land actually needed for the line itself." A case very similar to the one under consideration is the case of Seymour *v.* Railroad Co., 25 Barb. 284. It involved a controversy between the judgment creditors and the purchaser of railroad property at foreclosure sale, and in that case, it was squarely held that all lands acquired by the railroad company after the execution of the mortgage which were not used for railroad purposes were not covered by the lien of the mortgage, and did not pass by the foreclosure and sale to the purchaser, but were subject to a lien of the judgment creditors. The court in that case, at page 312, said: "It is in proof that some of the lands purchased in Batavia have never been used for railroad purposes; that in some instances whole lots were purchased to secure a right of way across them. If the railroad company for this purpose had purchased a lot of 10 or 100 acres, it cannot be that any more of such lots would be embraced in this mortgage to the plaintiffs than was actually taken and required for the road. In respect to all such lands outside of the legal limits of their railroad track and branches, and excepting land used for shops, depots, stations, turnouts for wood or water, or for other legitimate purposes, the lien of the defendants' judgment must prevail." To the same effect, see Railroad Co. *v.* Parker, 143 U. S. 42 12, Sup. Ct. 364, 36 L. Ed. 66; Railroad Co. *v.* Coffin, 50 Conn. 150; Mississippi Val. Co. *v.* Chicago, St. L. & N. O. R. Co., 58 Miss. 896; Eldridge *v.* Smith, 34 Vt. 484; Shirley *v* Railway Co., 78 Tex. 136, 10 S. W. 543; Railroad Co. *v.* Parker, 143 U. S. 42, 12 Sup. Ct. 364, 36 L. Ed. 66; Humphreys *v.* McKissock, 140 U. S. 304, 11 Sup. Ct. 1022, 35 L. Ed. 595; Dinsmore *v.* Railroad Co., 12 Wis. 725; Farmers' Loan & Trust Co. *v.* Commercial Bank, 11 Wis. 207; Walsh *v.* Barton, 25 Ohio St. 28.

We think the trial court was right in instructing the jury, upon the evidence submitted, to return a verdict for appellees. Judgment affirmed.

424 It is therefore considered by the court that the judgment of the court below in the above entitled cause be in all things affirmed at the cost of the appellant.

And it is further considered and adjudged by the court that the

appellees recover of the appellant the sum of $— for their costs and charges in this behalf expended.

And afterwards, to-wit: on March 7, 1903, comes the appellant, by counsel, and files its petition and briefs (8) for a rehearing herein.

And afterwards, to-wit: on March 24, 1903, come the appellees, by counsel, and file their brief (8) on said petition for rehearing.

And afterwards, to-wit: on March 26, 1903, come the appellees, by counsel, and file their motion to strike appellant's petition for rehearing from the files in said cause.

And afterwards, to-wit: on April 1, 1903, the same being the 111th judicial day of the November term 1902 of said appellate court, come the parties by counsel, and the court being advised in the premises, overrules appellant's petition for a rehearing heretofore filed herein in the above entitled cause.

425 Be it remembered, that afterward, to wit: on the 23rd day of May 1903, the said Chicago, Indianapolis and Louisville Railway Company, appellant, filed in the appellate court of Indiana its petition for the allowance of a writ of error by the Supreme Court of the United States, the entry of said filing being in these words and figures, to wit:

Comes now The Chicago, Indianapolis and Louisville Railway Company, the appellant in the cause entitled The Chicago, Indianapolis and Louisville Railway Company against Patrick McGuire *et al.*, No. 3780, and files its petition for the allowance of a writ of error in these words and figures, to wit:

426 In the Appellate Court of the State of Indiana.

The Chicago, Indianapolis & Louisville Railway Company *vs.* Patrick McGuire, M. M. Hathaway, and Phillip Dellinger, Sheriff of Pulaski County, Indiana.	No. 3780.

To any justice of the Supreme Court of the United States or the chief judge of the appellate court and presiding judge of division No. 1 of said court of the State of Indiana:

Petitioner, The Chicago, Indianapolis & Louisville Railway Company, respectfully represents that on or about the 8th day of November 1897, The Chicago, Indianapolis & Louisville Railway Company commenced a suit in the circuit court of Pulaski county, Indiana, against the defendants, Patrick McGuire, M. M. Hathaway and

Phillip Dellinger, sheriff of Pulaski county, Indiana, to quiet its title to certain lands and premises situated in the county of Pulaski, in the State of Indiana, particularly described in plaintiff's petition in said suit; and afterwards in response to process served upon them, the said McGuire, Hathaway and Dellinger, appeared and interposed among others the defense hereinafter mentioned in said action, and upon the trial of said cause in due course judgment was rendered by said circuit court in favor of said defendants. From the judgment so rendered by said circuit court, the said Chicago, Indianapolis & Louisville Railway Company appealed to the appellate court of the State of Indiana, where said cause upon ap-
427 peal was numbered and entitled as above; and afterwards, on to-wit, the 7th day of January, 1903, division No. 1 of said appellate court of Indiana rendered judgment whereby it affirmed the judgment of said circuit court, and rendered judgment in favor of said McGuire, Hathaway and Dellinger, and against said Chicago, Indianapolis & Louisville Railway Company, for all lands involved in said suit.

Afterwards, and in due time, said Chicago, Indianapolis & Louisville Railway Company, filed in said appellate court of Indiana its petition for a rehearing in said cause, and brief in support thereof, which was thereafter, to-wit, on the 1st day of April, 1903, by said court overruled and denied. Thereafter, and in due time, said Chicago, Indianapolis & Louisville Railway Company, applied in due form and as authorized by law to the supreme court of the State of Indiana, for a transfer of said cause, or a writ of error in said cause to said appellate court of Indiana, upon the ground and under facts hereinafter mentioned, which application was thereafter, to-wit, on the 13th day of May, 1903, by said supreme court denied, and the transfer of said cause and said writ so prayed for were refused; whereupon, the said judgment of the said appellate court of Indiana, which is the highest court of the State of Indiana in which a decision in said suit could be had, became and is now final.

Petitioner says that it is aggrieved by the said judgment of division No. 1 of the appellate court of Indiana, and the proceedings in said suit, and that in said judgment and proceedings had prior thereto in said cause, errors were committed to the prejudice of the petitioner, because it says there was in said suit drawn in question the validity of a statute and an authority exercised under the United States, and the decision in said suit was against their validity, and there was drawn in question the validity of a
428 statute, or a constitution of, or an authority exercised under a State, on the ground of their being repugnant to the Constitution, or laws of the United States, and the decision in said suit was in favor of their validity, and that titles, rights, privileges and immunities were in said suit claimed by petitioner under the Constitution and statutes of, and commissions held, and authority exercised under, the United States, and the decision in said court was against the titles, rights, privileges and im-

munities specially set up and claimed therein by petitioner under such Constitution, statutes, commissions and authorities, as will hereinafter more fully appear.

Petitioner says that upon the trial of said cause in said circuit court, The Chicago, Indianapolis, & Louisville Railway Company, the plaintiff therein, introduced in evidence a decree of the circuit court of the United States in and for the district of Indiana, rendered January 23, 1897, foreclosing three certain mortgages executed by the Louisville, New Albany & Chicago Railway Company, under whom the defendants in said suit claimed, one of said mortgages being executed to the Central Trust Company of New York and James Murdock as trustee; one of said mortgages being executed to the Farmers Loan & Trust Company and John H. Baker as trustee, and one of said mortgages being executed to the Central Trust Company of New York and John H. Stotsenberg as trustee, and ordering the sale of the property embraced in said mortgages; and also introduced other decrees and proceedings of said circuit court of the United States and its officers, showing sale of said mortgaged property pursuant to said foreclosure decree and specially set up and claimed at the time that said decree and proceedings in said circuit court of the United States embraced the property involved in this suit, and were effectual to vest the title to the same in those under whom the said Chicago, Indianapolis & Louisville Railway Company claimed; and afterwards, at the trial of said cause
429 the said court instructed the jury therein to return a verdict in favor of the said defendants and against the plaintiff, the petitioner herein, and to the said action and decision of the said court, the said Chicago, Indianapolis & Louisville Railway Company duly excepted, and upon its appeal to the said appellate court duly assigned such ruling of said circuit court as error, as shown by its assignments of error originally numbered 2 and 5; but said division of said appellate court overruled and refused to sustain said assignment of error, and confirmed such action of said circuit court.

Petitioner further says that at the trial of the said cause, and for the purpose of proving that the real estate described in its complaint therein was owned by the said Louisville, New Albany & Chicago Railway Company at the time of the execution of each of said several mortgages above mentioned, and was covered by and included in the said mortgages under that part of the descriptions therein which covered all property of any nature owned by the mortgagor at the time the said mortgages were made; and for the purpose of proving that said property was included in the decree of the said United States circuit court foreclosing said mortgages, where the said decree directed the sale of all property owned by the mortgagor company at the date of the execution of said several mortgages; and for the purpose of showing that by the sale of said property and execution of deeds by the receiver and special master making the sale and the orders and decrees of the said court subse-

quent to said decree, the said Chicago, Indianapolis & Louisville Railway Company offered in evidence a plat of the town of Francesville, Indiana, in which said town the said real estate in controversy is situated, executed in 1862 by one Allison, which had been duly recorded, by which said plat the said real estate became and was dedicated to the said railway company.

430 And for the same purpose the said plaintiff company offered to prove its possession of said property and the payment of taxes thereon since said time.

And for the same purpose, the said plaintiff company offered in evidence the said plat in connection with a deed for the said real estate recognizing the existence of said plat, which deed was executed by one Brooks and his wife, conceded to be the sole heirs surviving of the owner of said real estate at the time said plat was executed.

The court refused to permit the plaintiff to introduce said plat in evidence; the court refused to permit said plaintiff to prove possession of said real estate since possession of said plat; the court refused to permit the plaintiff to prove the payment of taxes or special assessments assessed against said real estate since the date of said plat and there was no evidence admitted at the trial of said cause in lieu of such evidence so excluded, or which proved the facts which would have been shown if such evidence had been admitted. To the action and decision of said circuit court in excluding said several items of evidence and in excluding each of them separately and severally, the said Chicago, Indianapolis & Louisville Railway Company duly excepted, and upon appeal to the said appellate court duly assigned said ruling of said circuit court as error, as shown by the assignment of error originally numbered 2 and 5. But said division No. 1 of the appellate court overruled and refused to sustain said assignment of error and affirmed said action of said circuit court.

Before the trial of said cause, the said Chicago, Indianapolis & Louisville Railway Company filed its amended complaint in two paragraphs. In the first paragraph of its said amended complaint, the said plaintiff company set up and claimed title to said real

431 estate in controversy in fee simple and charged that the defendants claimed an interest therein adverse to the title of the plaintiff; that such claim was unfounded and constituted a cloud on the title of the plaintiff. In the second paragraph of said amended complaint, the said plaintiff company charged that it was the owner of an easement in the said real estate. The said paragraph specifically averred the dedication of said property by said plat; and in detail told of the transfer thereof from the then existing corporation owning the same to the said Louisville, New Albany & Chicago Railway Company, and afterwards said company by force of the decree of the United States court for the district of Indiana, vested said title in the persons through whom by deed the petitioning company herein claims title to such interest in such property.

That the said circuit court upon the motion of the said defendants held that said paragraph of complaint was insufficient to show title in this plaintiff to the said property therein described, or any part of it, and directed that said paragraph be made more specific. Whereupon, the said plaintiff believeing that the said paragraph fully and sufficiently showed title to said easement in the petitioner herein by virtue of said plat and said decrees, refused to amend its said paragraph and because of such refusal the defendants were not required to answer it, and no issue was made upon said paragraph of complaint and the rights therein averred were denied to the petitioner. That the said petitioner, The Chicago, Indianapolis & Louisville Railway Company duly excepted to the said ruling of the said circuit court, and upon its appeal to the said appellate court, duly assigned such ruling of said circuit court as error, as shown by its assignment of error originally numbered 3 and 4. But said division of said appellate court overruled and refused to sustain said assignment of error, and affirmed such action of said circuit court.

432 Petitioner further says that each of the rulings above mentioned and complained of with others, were duly assigned as error in the application made as aforesaid by the said Chicago, Indianapolis & Louisville Railway Company to the supreme court of the State of Indiana for writ of error or transfer of said cause to it, but the same with the said application for a writ of error or transfer were overruled and denied by said supreme court.

Petitioner refers to the record of said cause, as filed in said appellate court, for further and more complete statements of the rulings and proceedings complained of, and the facts that specially set up and claimed the benefit of the decree aforesaid of said circuit court of the United States, and of the proceedings thereunder, and for the manner in which such claims were set up and made. And petitioner says that in the proceedings above mentioned in said cause, they specially set up and claimed title-, rights, privileges and immunities, under the Constitution and statutes of, and commission held and authorities exercised under, the United States, and the decision of said circuit court and of the said division of said appellate court, and of the said supreme court of the State of Indiana, were against the titles, rights, privileges and immunities, specially set up and claimed by the petitioner, The Chicago, Indianapolis & Louisville Railway Company, in said cause.

Petitioner refers to the assignment of errors filed herewith and prays that the same may be considered for the purposes of this application as a part hereof, and further prays that a writ of error may be allowed and issued herein to the said appellate court in and for Indiana, which now has the record in said cause, for the removal of said cause to the Supreme Court of the United States, to the end that the error in said judgment and the proceedings in said cause may be duly corrected, and full and speedy justice done to the par-

ties aforesaid in this behalf, and that the transcript of the
433 record, proceedings and papers in said cause duly authenticated, may be sent to said Supreme Court.

E. C. FIELD,
G. W. KRETZINGER,
H. R. KURRIE,
Attorneys for the Chicago, Indianapolis & Louisville Railway Company.

Allowed this 23rd day of May, 1903.

FRANK S. ROBY,
Chief Judge of the Appellate Court of Indiana.
JAMES B. BLACK,
Presiding Judge Division No. 1 of the Appellate Court of Indiana.

434 [Endorsed:] In the appellate court of Indiana The Chicago, Indianapolis & Louisville Ry. Co. *vs.* Patrick McGuire *et al.* Petition for writ of error. Filed May 23 1903 R. A. Brown clerk.

435 Be it further remembers, that afterward, to wit: on the 23rd day of May, 1903, the said Chicago, Indianapolis and Louisville Railway Company, appellant, filed in the appellate court of Indiana, the writ of error issued by the Supreme Court of the United States, the entry of said filing being in these words and figures, to wit:

Comes now The Chicago, Indianapolis and Louisville Railway Company, the appellant in the cause entitled The Chicago, Indianapolis and Louisville Railway Company against Patrick McGuire, *et al.*, No. 3780, and files the writ of error issued by the Supreme Court of the United States, which writ of error is in these words and figures, to wit:

436 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the appellate court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said appellate court, before you, between The Chicago, Indianapolis & Louisville Railway Company and Patrick McGuire, M. M. Hathaway and Phillip Dellinger, sheriff of Pulaski county, Indiana, a manifest error hath happened to the great damage of the said Chicago, Indianapolis & Louisville Railway Company, as by *his* complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid on this be-

half, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States circuit court of appeals for the seventh circuit, together with this writ, so that you have the same at Chicago, thirty days after the date hereof, in the said United States circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 23 day of May, A. D. 1903.

[Seal Circuit Court of the United States, State of Indiana.]

NOBLE C. BUTLER, *Clerk.*

[Endorsed:] Filed May 23 1903. R. A. Brown clerk.

437 Be it further remembered, that afterward, to wit: on the 23rd day of May, 1903, the said Chicago, Indianapolis and Louisville Railway Company, appellant, filed in the appellate court of Indiana the writ of error issued by the Supreme Court of the United States, the entry of said filing being in these words and figures, to wit:

Now comes The Chicago, Indianapolis and Louisville Railway Company, the appellant in the cause entitled The Chicago, Indianapolis and Louisville Railway Company against Patrick McGuire *et al.*, No. 3780, and files its appeal bond in these words and figures, that is to say:

438 Know all men by these presents, that we, the Chicago, Indianapolis & Louisville Railway Company, as principal, and James Murdock, as surety, are held and firmly bound unto Patrick McGuire, M. M. Hathaway and Phillip Dellinger, sheriff of Pulaski county, Indiana, in the full and just sum of five thousand dollars ($5,000), to be paid to the said Patrick McGuire, M. M. Hathaway and Phillip Dellinger, sheriff as aforesaid, their executors or assigns or successors in office, for which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, trustees, assigns and receivers, jointly and severally by these presents.

Sealed with our seals, and dated this 23d day of May, in the year of our Lord, one thousand nine hundred and three.

Whereas, lately at a term of the appellate court in and for the State of Indiana, in a suit pending in said court between The Chicago, Indianapolis & Louisville Railway Company, *as* appellant, and Patrick McGuire, M. M. Hathaway and Phillip Dellinger sheriff as

aforesaid, *were* appellees, a judgment was rendered in and by division No. 1 of said court against the said Chicago, Indianapolis & Louisville Railway Company for certain lands and premises described in its complaint in said cause, and the said Chicago, Indianapolis & Louisville Railway Company, having obtained a writ of error and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid cause, and a citation directed to the said Patrick McGuire, M. M. Hathaway and Phillip Dellinger, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington within thirty days of the date hereof.

439 Now, the condition of the above obligation is such, that if the said Chicago, Indianapolis & Louisville Railway Company shall prosecute its writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY,
By ELISHA C. FIELD, *Its General Solicitor*.
JAMES MURDOCK.

I approve the foregoing bond this 23d day of May, 1903.

FRANK S. ROBY,
Chief Judge of the Appellate Court of Indiana.
JAMES B. BLACK,
Presiding Judge Division No. 1 of the Appellate Court of Indiana.

Filed in the appellate court of the State of Indiana, this 23rd day of May, 1903.

R. A. BROWN, *Clerk.*

440 Be it further remembered, that afterward, to wit: on the 23rd day of May 1903, the said Chicago, Indianapolis and Louisville Railway Company, appellant, filed in the appellate court of Indiana, the writ of error issued by the Supreme Court of the United States, the entry of said filing being in these words and figures, to wit:

Now comes The Chicago, Indianapolis and Louisville Railway Company, appellant in the cause entitled The Chicago, Indianapolis and Louisville Railway Company against Patrick McGuire *et al.*, No. 3780, and files the citation on said writ of error duly served on the defendants in error, said citation and endorsement of service thereon being in these words and figures, towit:

441 THE UNITED STATES OF AMERICA, *ss*:

To Patrick McGuire, M. M. Hathaway, and Phillip Dellinger, sheriff of Pulaski county, Indiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the appellate court of the State of Indiana, wherein The Chicago, Indianapolis & Louisville Railway Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of May, in the year of our Lord, one thousand nine hundred and three.

FRANK S. ROBY,
Chief Judge of the Appellate Court of Indiana.
JAMES B. BLACK,
Presiding Judge Division No. 1 of the Appellate Court.

We hereby accept service of the above and foregoing citation in error, and waive further service thereof, and further waive the insertion of the Christian names of the defendants in error.

Dated May 23, 1903.

____ ____,
____ ____,
____ ____,
Attorneys for Defendants in Error.

441½ This writ came to hand this 23rd., day of May, one thousand nine hundred and three, and I this day served the same on Charles C. Spencer, attorney for the above named Patrick McGuire, M. M. Hathaway, and Phillip Dellinger, sheriff of Pulaski county, Indiana, by reading the same to him.

Witness my hand at Monticello, Indiana, this 23rd., day of May, one thousand nine hundred and three.

GEORGE STEPHENS,
Sheriff of White County, Indiana,
By H. E. McCULLY,
Chief Deputy.

Mileage	20
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442 [Endorsed:] In the appellate court of Indiana. The Chicago, Indianapolis & Louisville Ry. Co. *vs.* Patrick McGuire *et al.* Citation.

443 Be it further remembered, that afterwards, to wit: on the 23rd day of May, 1903, the said Chicago, Indianapolis and Louisville Railway Company, appellant, filed in the appellate court of Indiana the writ of error issued by the Supreme Court of the United States, the entry of said filing being in these words and figures, to wit:—

Comes now The Chicago, Indianapolis and Louisville Railway Company the appellant in the cause entitled The Chicago, Indianapolis and Louisville Railway Company against Patrick McGuire No. 3780, and by its counsel files its assignment of error, the entry of said filing being in these words and figures, to wit:

Now comes the appellant by *his* counsel and files its assignment of errors in these words and figures, to wit:

444 In the Appellate Court of the State of Indiana, Division No. 1.

THE CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY Company
vs.
PATRICK MCGUIRE, M. M. HATHAWAY, and PHILLIP Dellinger, Sheriff of Pulaski County, Indiana. } No. 3780.

Assignment of Error.

Now comes plaintiff in error in the above entitled cause, The Chicago, Indianapolis & Louisville Railway Company, and on writ of error from the Supreme Court of the United States says that in the record and proceedings in said cause there is manifest error.

1st. Plaintiff offered and the court admitted in evidence on behalf of plaintiff, the foreclosure proceedings had in the circuit court of the United States and district of Indiana, the decree of foreclosure and sale entered in said proceedings by that court, and the deeds made pursuant to said decree, under which plaintiff in error became the owner of the property involved in the above entitled suit. That the trial court and appellate court wholly disregarded the force and effect of said foreclosure decree and such evidence made thereunder and pursuant thereto.

2nd. That said State courts wholly failed and refused to give full force and effect to said foreclosure decree so entered by the circuit court of the United States as aforesaid, and wholly failed and refused to give any force or effect whatever to the proceedings

445 had under said decree and in the enforcement thereof; in this, that the railroad mortgages foreclosed by said decree in said circuit court of the United States, covered and included in its

description of the property therein conveyed the real estate here involved, and the decree foreclosing said mortgages so included in this description of the property covered by said mortgages and to be sold in satisfaction thereof, the piece of real estate here involved, notwithstanding which the said State courts wholly failed and refused to give such effect thereto.

3rd. That for the purpose of more fully showing that the real estate here involved was owned by the railroad mortgagor at the time of the execution of the mortgages so foreclosed as aforesaid, plaintiff in error offered in evidence on the trial of this cause in the trial court of said State, a plat of the town of Francesville, executed in 1862, by one Allison, which plat had been duly recorded, it appearing that such plat was both executed and recorded long prior to the execution of said foreclosed mortgages; and also offered evidence showing that the mortgagor of said railroad mortgages so foreclosed as aforesaid, had been in possession of and had paid taxes upon said property from the date of the donation of the land here involved to said mortgagor, which donation was made and shown upon said plat from the date of said plat and its recording down to the institution of the foreclosure proceedings aforesaid, in the circuit court of the United States for the district of Indiana, said proceedings to foreclose having been instituted in said court on the 12th day of November, 1896, which refusal plaintiff in error here assigns for error.

4th. That through said foreclosure proceedings, decree and sale, so entered and had in and through said circuit court of the United States for the district of Indiana, plaintiff in error became the lawful owner of the real estate here involved, and the judgment
446 of the State courts divesting the title of plaintiff in error thereto, constitute a refusal on the part of said State courts to recognize or to give full lawful force and effect to said proceedings, foreclosure decree and conveyances, in and through said Federal court, contrary to the Constitution and laws of the United States.

Wherefore, said plaintiff in error prays that the judgment of said courts of the State of Indiana, be reversed, and said *courts* remanded for such further proceedings as the Constitution and laws of the United States may require.

G. W. KRETZINGER,
E. C. FIELD,
H. R. KURRIE,
Attorneys for Plaintiff in Error.

447 [Endorsed:] In the appellate court of Indiana. The Chicago, Indianapolis & Louisville Ry. Co. *vs.* Patrick McGuire *et al.* Assignment of errors on writ of error. Filed May 23, 1903. R. A. Brown, clerk.

448 STATE OF INDIANA:

In the Appellate Court.

I, Robert A. Brown, clerk of the supreme court, and *ex-officio* clerk of the appellate court in and for the State of Indiana, hereby certify the above and foregoing to be a full, true and complete transcript of the record of the proceedings had, papers filed, (except briefs), motions decided, rulings made, opinions delivered, and judgment rendered, in the said appellate court of Indiana, in the cause entitled The Chicago, Indianapolis and Louisville Railway Company, appellant, against Patrick McGuire, *et al.*, appellees, and numbered 3780, as appears from the records and original papers on file in my office.

I further certify that the writ of error inserted in said transcript is the original writ of error issued by the Supreme Court of the United States and filed in said cause.

In witness whereof, I hereunto set my hand, and affix the seal of said appellate court, at the city of Indianapolis, Indiana, this 12th day of June A. D., 1903.

[Seal Appellate Court, State of Indiana.]

ROBT A. BROWN,
Clerk Appellate Court of Indiana.

449 In the Supreme Court of the United States.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY Company, Plaintiff in Error,
vs.
PATRICK MCGUIRE ET AL., Defendants in Error. } Cause No. 336.

In the above entitled cause the undersigned, attorneys for the petitioner in error and defendants in error in the above cause, agree that the two pages attached to this stipulation contain a true and correct copy of the proceedings had in the supreme court of Indiana in the above cause, and the certificate of the clerk of said court with reference thereto. We further agree that the Honorable James H. McKenney, clerk of the Supreme Court of the United States, may attach to the transcript of the record now on file in said court in said cause, the said two pages, as a part of said record before it is printed, and print the same as a part thereof as if said pages had been attached to said transcript as the last pages thereof before it was filed in said court.

E. C. FIELD,
Attorney for Plaintiff in Error.
W. H. H. MILLER,
Attorney for Defendants in Error.

450 And afterwards, to-wit: on April 25, 1903, comes the appellant, by counsel, and files its petition to transfer the above entitled cause to the Supreme Court for decision.

And afterwards, to-wit: on April 28, 1903, come the appellees by counsel, and file their answer to appellant's petition to transfer the above entitled cause to the Supreme Court for decision.

And afterwards, to-wit: on May 14, 1903, the same being the 148th judicial day of the November term 1902 of said court, come the parties by counsel, and the Supreme Court being advised in the premises, denies appellant's petition to transfer the above entitled cause to that court for decision.

451 STATE OF INDIANA, }
Supreme Court. }

I, Robert A. Brown, clerk of the supreme court, and *ex-officio* clerk of the appellate court in and for the State of Indiana, certify that the above and foregoing is a full, true and complete copy of the proceedings in the supreme court in cause No. 3780, Chicago, Indianapolis and Louisville Railway Company *v.* Patrick McGuire, *et al.*, as appears from the original entries on the dockets of the said supreme court.

In witness whereof, I hereto set my hand, and affix the seal of said supreme court, at the city of Indianapolis, Indiana, this 7th day of July, 1903.

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

ROBT A. BROWN,
Clerk Supreme Court of Indiana.

452 [Endorsed:] Chicago, Indianapolis & Louisville Railway Company, plaintiff in error *vs.* Patrick McGuire, *et al.* defendants in error. Stipulation

453 [Endorsed:] File No. 18,987. Supreme Court U. S. October term, 1903. Term No. 336. Chicago Indianapolis & Louisville Railway Co. P. E. *vs.* Patrick McGuire *et al.* Stipulation & addition to record. Filed July 18", 1903.

Endorsed on cover: File No. 18,987. Indiana appellate court. Term No. 69. The Chicago, Indianapolis and Louisville Railway Company, plaintiff in error, *vs.* Patrick McGuire, M. M. Hathaway, & Phillip Dellinger, sheriff of Pulaski county, Indiana. Filed June 29, 1903.

IN THE SUPREME COURT OF THE UNITED STATES.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY,
Plaintiff in Error,
vs.
PATRICK MCGUIRE ET AL., Defendants in Error.
No. 69.

In the above cause it is hereby agreed between counsel for plaintiff and defendants in error, that the certified copy of the plat of the town of Francesville, which appears in the printed record between pages 12 and 13 thereof, and which is marked page *21a*, instead of being in the record at said place ought to be in the record between pages 38 and 39 of the printed record, instead of the plat which is now at said place and marded page *62b*; said plat last above mentioned being in fact the plat which was "Exhibit A" to the second paragraph of complaint and which ought to appear where said plat marked page *21a* now is.

It is agreed that the original record in said cause showed said plat marked page *21a* in the bill of exceptions at the place where said plat marked *62b* appears in the printed record. It is agreed that the said printed record may be regarded as corrected so this cause may be heard and determined the same as if said plat marked page *21a* was in fact at the place where said plat marked page *62b* now is, and said plat marked *62b* at the place where said plat marked *21a* now is. But it is not considered by defendants in error that said second paragraph of amended complaint is properly in the record.

E. C. FIELD,
H. R. KURRIE,
Attorneys for Plaintiff in Error.
CHAS. C. SPENCER,
M. WINFIELD,
W. W. W. MILLER,
Attorneys for Defendants in Error.

[Endorsed:] In the Supreme Court of the United States. No. 69. Chicago, Indianapolis & Louisville Ry. Co., plaintiff in error, *vs.* Patrick McGuire, *et al.*, defendants in error Agreement for correction of plat in printed record.

[Endorsed:] File No. 18,987. Supreme Court U. S., October term, 1904. Term No. 69. The Chicago, Indianapolis & Louisville Railway Co., P. E., *vs.* Patrick McGuire *et al.* Agreement for correction of plat in printed record. Filed Nov. 7", 1904.